Francis Hargrave.

15 I. e.

WHITELOCKES · NOTES UPPON · THE · KINGS · WRITT FOR · CHOOSING · MEMBERS · OF · PARLEMENT XIII · CAR · II BEING · DISQUISITIONS ON · THE · GOVERNMENT · OF · ENGLAND BY · KING · LORDS · AND · COMMONS.

PUBLISHED BY CHARLES MORTON, M. D.

SECRETARY OF THE ROYAL SOCIETY, FELLOW OF THE SOCIETY OF ANTIQUARIES, AND OF THE IMPERIAL LEOPOLDINE AND PETERSBURG ACADEMIES, FIRST UNDER LIBRARIAN OF THE BRITISH MUSEUM, AND PHYSICIAN TO THE FOUNDLING HOSPITAL.

VOLUME I.

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IN THE YEAR MDCCLXVI.

FH
MVSEVM
BRITANNICVM

TO THE

KING's MOST EXCELLENT MAJESTY.

THE following COMMENT, upon the WRIT for chooſing Members of Parliament; addreſſed to YOUR MAJESTY's Predeceſſor, King CHARLES II. by the author Sir BULSTRODE WHITELOCKE; and now firſt printed, from the original Manuſcript; is moſt humbly inſcribed by

YOUR MAJESTY's,

Moſt dutiful, and loyal,

Subject and Servant,

Britiſh Muſeum,
April 23, 1766.

CHARLES MORTON.

CONTENTS of VOLUME I.

The editor's preface.
The author's dedication to king Charles II.

CAP. I. THE writ, 13 Car. II. in latin and engliſh, PAGE 1
—— II. Charles the ſecond, - - 4
—— III. By the grace of God, - - 8
—— IV. Of England, Scotland, - - 12
—— V. France, and Ireland, - - 18
—— VI. King; - - 25
—— VII. Defender of the faith, &c; - 49
—— VIII. To the ſheriffe - - 54
—— IX. Of Bucks, - - 63
—— X. Greeting. - - 70
—— XI. Whereas by advice, - 75
—— XII. And aſſent, - 84
—— XIII. Of our - - 87
—— XIV. Council; - - 89
—— XV. For ſome great, and weighty affairs, 102
—— XVI. Concerning us; - 108
—— XVII. The ſtate, - - 115
—— XVIII. And defence, - 124
—— XIX. Of our kingdom of England; - 132
—— XX. And, of the church of England: 137
—— XXI. We have ordained - 166
—— XXII. Our parliament - 172
—— XXIII. To be holden, - 199
—— XXIV. At our city - - 211
—— XXV. Of Weſtminſter, - 214
—— XXVI. On the eight day - 217
—— XXVII. Of May - - 225
—— XXVIII. Next enſuing; - 231

CAP. XXIX. And there to have conference, PAGE 234
—— XXX. And treaty, - - 237
—— XXXI. With the great men, - 239
—— XXXII. And nobles, - 270
—— XXXIII. Of our ſaid kingdome. - 315
—— XXXIV. We command you, - 329
—— XXXV. Firmly injoyning, - 333
—— XXXVI. That proclamation being made - 336
—— XXXVII. In your next county court, - 340
—— XXXVIII. To be held after receipt - 354
—— XXXIX. Of this our writ, - 356
—— XL. Of the day, and place aforeſaid; - 361
—— XLI. You cauſe to be elected - 366
—— XLII. Freely, and indifferently, - 383
—— XLIII. By thoſe who ſhall be preſent - 390
—— XLIV. At ſuch proclamation; - 395
—— XLV. (According to the forme - 397
—— XLVI. Of the ſtatutes thereof - 399
—— XLVII. Made, and provided;) - 406
—— XLVIII. Two knights - 433
—— XLIX. Girt with ſwords, - 440
—— L. Moſt fitt, 459
—— LI. And diſcreet men, - 475
—— LII. Of the ſaid countey; - 487
—— LIII. And of every cittie - 489
—— LIV. Of that countey, - 492
—— LV. Two cittizens; - 495
—— LVI. And of every borough, - 497
—— LVII. Two burgeſſes; - 500
—— LVIII. Of the diſcreeter, - 503
—— LIX. And more ſufficient men; - 514

CHAP.

THE EDITOR'S PREFACE.

I BEG leave to premiſe, by way of introduction, certain particulars; which relate to the following book, and to the author thereof.

And 1ſt. concerning the book; which is printed from a fair manuſcript, in ſix volumes octavo, now depoſited in the britiſh muſeum. This manuſcript was put into the hands of the editor to be printed, and then preſented to the britiſh muſeum for the inſpection of the public, by the owner the late Thomas Carew, of Crocombe in the county of Somerſet, eſq; member in the ninth parliament of Great Britain, for the borough of Minehead in the ſame county. This favour was obtained by the goodneſs, and at the inſtance, of the right honourable Sir John Cuſt, bart. the preſent ſpeaker of the honourable houſe of commons; the right honourable Arthur Onſlow, eſq; the late ſpeaker; and the honourable Sir Richard Adams, knight, one of the barons of his Majeſty's court of exchequer; to whom, therefore, the publick is indebted for the uſeful preſent that is now made to it. I underſtand, that Mr. Carew bought this manuſcript at the ſale of the library of the late duke of Chandos, in the year 1747[a]. But how it came into

[a] On March 26, being the 13th night's ſale of that library. MS. N° 1849. as appears from the auctioneer's catalogue, p. 77.

his grace's poſſeſſion does not appear. It was ſuppoſed to have been in the hands of the firſt earl of Clarendon: but this is doubtful; as I have been aſſured, that the diſperſion of the library of that noble lord did not take place 'till about ten years ago. Be this as it may; there is no doubt that the whole manuſcript is the hand writing of the author. And this appears by official ſignatures of his name, in my poſſeſſion; with which I was favoured by Edmund Waller, of Beconsfield, eſq; out of the papers of his celebrated anceſtor, the contemporary of our author: and it appears yet more undeniably from an entire letter in Sir Bulſtrode Whitelocke's hand writing, dated June 9, 1646; which is now extant in the ſloanian collection of manuſcripts [b].

From the circumſtance aforeſaid, and from the condition of the manuſcript, which is rather elegant, bound in turkey leather with gilt leaves; I am inclined to think that this is the very original preſented, or deſigned to be preſented, to king Charles the 2d: "not expoſed to others view, (in the words of the author,) but "gathered purpoſely, and tendered moſt humbly to (his) majeſty; "not in a preſumption of any thing worthy (his) acceptance, but "in a gratefull ſenſe of (his) goodneſs to (the author,) who de-"ſires to own it with his own conviction, and indeavour to con-"vince others [c]."

It is very clear, that the preſent publication can have no weight, but as it is conformable to the original: and this made it of conſiderable conſequence to preſerve the original entire. To this end, a copy was carefully taken for the uſe of the preſs; wherein the ſpelling of the author's manuſcript was preſerved throughout; except where it ſeemed to obſtruct the ſenſe by ſome equivocation, as

[b] See Sloan. MS. N° 1519. article 65. britiſh muſeum. [c] See the author's dedication to king Charles 2.

in

in the words "whither," and "then," for "whether," and "than," and a very few others. In the printing, the ſeveral proofs have been carefully collated with the original: and it has been attempted to render the text, which often runs out into very long periods, more intelligible by pointing; which yet, perhaps, is not ſo perfect as it ought to be. The notes alſo have been fitted, by literal references, to thoſe parts of the text to which they ſeemed to belong; which was omitted in the author's manuſcript: and any miſtakes, in this particular, muſt be imputed to the editor. When a difficulty hath appeared, either in the notes or text, the authorities have been inquired into, and conſulted; and ſometimes a word, which ſeemed to be wanting, is inſerted [between brackets] in the text: ſmall occaſional illuſtrations have alſo been added in the notes, which are diſtinguiſhed by the letter (M). But though conſiderable pains have been taken; as will appear to thoſe who ſhall pleaſe to conſult the author's manuſcript: yet, amongſt ſo great a number of quotations, and in ſuch variety of languages, ſome faults will, probably, yet remain; for which the reader's indulgence is requeſted.

With relation to the ſources, from whence the materials of the following ſheets are drawn; they are, principally, the works of our author's learned friend Mr. Selden, which he ſeems to have tranſferred wholly into his common-place; and uſes with the ſame freedom, as if they were his own. Not but that very frequent recourſe is had to many other authors; amongſt whom the names of Mr. Lambard, lord chief juſtice Coke, Sir Roger Owen, and Sir Henry Spelman, are very conſpicuous. Our author appears alſo, to have thoroughly ſearched the rolls and journals of parliament, the patent and cloſe rolls, with other records; and alſo the royal and cotton libraries, of the former of which he condeſcended to be the

keeper. Upon the whole, I apprehend, the publick will have great obligations to our author, for rendering intelligible to the generality of readers that maſs of uſeful knowledge, which lies hidden from them under very forbidding appearances.

It is probable that the treatiſe, thus preſented to the world, is the manuſcript mentioned by Mr. Penn, (in his preface to the "memorials of engliſh affairs" printed in 1709,) and entitled "Of "the power and practice of parliaments." The author's title, prefixed to the manuſcript, is "Whitelocke's notes upon the king's "writt for chooſing members of parliament, 13 Car. 2." with this motto, "In the multitude of counſellors there is ſafety[d]." But it being the opinion of ſome reſpectable perſons, that this very modeſt title would be an injuſtice not only to the author's memory, but to the publick; by preſenting them with a book under a title not very intereſting, and perhaps, not generally to be underſtood: the title which it now bears has been prefixed; and will, it is hoped, be accepted by the candid reader for the following reaſons.

The author in his dedication to king Charles II. declares, that "the ſubject of this book is that governement wherof the king is "the head; and therein concerned more than any others." That the particulars inſiſted upon are 1. "To vindicate that government "from calumnies, and ſcandalous invectives caſt upon it by igno-"rance, and malice." 2. "To ſhew it's dependance upon the "ſacred polity." 3. "To ſet forth the unparalleled juſtice, and "equality therof." 4. "To ſhew the approbation, and continu-"ance of it, under ſo many conqueſts, changes, and ages as have "paſſed under his majeſty's royal anceſtors." And 5. "To note "ſome reſemblances in other governments." From this declaration

[d] Prov. xi. 14.

of

of the ſubject of the book, in the words of the author; I hope I ſhall be underſtood to have, in a ſort, his own warrant for the title it now bears. And as the deſign of our author, throughout the whole work, ſeems to be to vindicate the antient conſtitutional government of theſe kingdoms, againſt two very oppoſite parties; it may be material to give a brief account of the ſaid parties, and of the arguments which he employs againſt them.

Thoſe who are acquainted with the hiſtory of the laſt century cannot be ignorant of certain unhappy diſputes, which were delivered down from the preceding century; and did agitate, and divide, theſe kingdoms. Theſe diſputes were firſt about matters, which might be ſuppoſed to have nothing to do with civil government. How they began may be gathered from the life, and prefatory tracts, which accompany the works of the learned Mr. Hooker[c]: and how the civil powers became, afterwards, engaged therein, has been further traced by many excellent pens. Three parties ſeem to be diſtinguiſhable, very early; viz. 1. Such as held, and explained in the moſt rigorous ſenſe, certain doctrinal points adopted by the firſt reformers; and uſed by them, not without ſucceſs, againſt the church of Rome. And it being rather difficult to ſeparate between doctrine, and diſcipline; the deſire of reformation, which began here in the former, was extended to the latter; and the whole form of church diſcipline, which had been brought from Geneva to Scotland, was held to be eſſential to the reformation in England. Oppoſite to theſe, and very conſiderable for their learning, rank and power, were ſuch as agreed in the main with the doctrinal points adopted by the firſt reformers; but differed in ſome circumſtances attending them. The perſuaſions, for inſtance, and ſenſibility of a ſtate of grace, were common both to the former, and to

[c] See edit. 1676, &c.

the latter: but the irreſiſtibility, and predeſtination thereto, were peculiar to the former; the latter ſeeming to come nearer particular deciſions of the council of Trent, in a denial of theſe circumſtances, and in the doctrine of merit. The latter adhered alſo to the eſtabliſhed form of eccleſiaſtical diſcipline; and had the ſanction of the royal civil power.

It would be hard to deny, that very many of theſe two oppoſite parties were well intentioned perſons, and ſincere in their notions. And that ſincerity makes it the more to be lamented, that they could ever be induced to depart from the conſtitutional royalty of theſe kingdoms; and to think that the very being of religion, and civil government, depended upon the eſtabliſhment of one of the two extremes; viz. either a tumultuous democracy, or a deſpotic monarchy. What men gradually aſſociated themſelves to theſe two parties, and with what views and purpoſes, is not neceſſary to be now ſaid. But as the differences began upon religious points; ſo the reſpective claims were grafted upon a divine right: and were managed chiefly, in the way of controverſy, by ſcriptural arguments.

The third party that is diſtinguiſhable ſeems, when it acted, to have acceded occaſionally to both the former; being a ſort of middle party, of a more temperate kind, acquainted with the hiſtory, laws, and antiquities of the kingdom; and not entire ſtrangers to matters of religion. Theſe hearkened to the reſpective claims, with a ſubordination to their own notions of the legal conſtitution. And though the temper they obſerved may have intitled them to ſome reſpect; yet it did not make them beloved, by either of the two former parties.

The author of the following ſheets ſeems to have adhered conſcientiouſly, and ſteadily, to this temperate party; and to have been more uniform in his behaviour, than perhaps any other perſon whoſe character has come to our knowledge. If we view him in his private memoirs; we never find him giving any countenance to ſchemes of violence. He is always declaring what he conceives to be the laws, and conſtitution of the kingdom; and aſſerting the impoſſibility of preſerving thoſe laws, if the form of government were to be altered: to which he bore a manly teſtimony upon divers memorable occaſions. And as he did not want opportunities, either in the time of Oliver Cromwell or afterwards, particularly in the year preceding the reſtoration, to have ſecured wealth and greatneſs to himſelf, if he would have given up his principles: ſo he muſt be abſolved from the imputation, laid upon him by Mr. Wood, of being obſervant only of his own intereſt. That he gained nothing by his publick connections, he ſolemnly declares in the following work: and that he was not utterly ruined at the reſtoration, was owing to the mercy and goodneſs of the king[f]; upon conviction of his integrity, and temperate behaviour.

It is not for me to decide concerning the reſpective merits, or demerits, of theſe three great ſets of men. What happened is but too well known. The form of government in church, and ſtate, was diſſolved; and the reigning king loſt his life, in the face of the world. New eſtabliſhments, of various kinds, were ſought; but could not be found, or at leaſt fixed, amongſt the diſcordant perſonal intereſts that intervened. Under this fluctuation of affairs, after the death of Oliver Cromwell and the removal of his ſon Richard, king Charles 2. was invited to England. And the convention parliament having met, in April, 1660; the lords declared, on the 1ſt of May following: that "according to the antient, and

[f] See the author's dedication.

"funda-

" fundamental laws of this kingdom, the government is, and ought " to be, by king, lords, and commons [g]."

In the year preceding the reſtoration, we find that our author, together with major Wildman, had been " employed in conſidering " of a form of government of a free ſtate; wherein they two, and " none elſe, had gone far [h]." It is not improbable, that the five articles in major Wildman's declaration, anno 1654, repreſent the outlines of their plan [i]; and that the preſent treatiſe contains part of their materials: and perhaps more of them are in another manuſcript mentioned by Mr. Penn, entitled, " a treatiſe upon the power " of princes, eſpecially in eccleſiaſtical affairs." Our author's ſpeeches upon divers publick occaſions are printed; and a great part of the matter of them is plainly interwoven in the following work. Wherein, under the form of notes upon the ſeveral ſentences of the king's writ for chooſing members of parliament, he has debated the whole queſtion, concerning the conſtitutional government of England; agreeably to the foregoing declaration of the houſe of lords. The time, when he began the preſent treatiſe, ſeems to have been ſoon after king Charles II's return to England, and iſſuing the writ of ſummons: for in p. 44. vol. ii. he mentions, that the biſhops were not then reſtored to the houſe of lords [ii]; which was effected in the 13th of Car. 2. [k] And it muſt have employed him ſeveral years; as we find him cite an act of parliament in the 16th of Car. 2. [l]

From the preceding account of the controverſies in theſe nations, and of the actors in thoſe controverſies; the reader will neither be ſurpriſed, nor offended, at the frequent uſe that is made in the following ſheets, of ſcriptural arguments; they being almoſt the only ones,

[g] Whitelocke's memorials, edit. 1732. p. 700.
[h] Memorials, p. 692.
[i] See memorials, p. 618—620.
[ii] The expreſſion is; " the biſhops being at preſent, not of the lords houſe."
[k] 13 Car. 2. ſtat. 1. cap. 2.
[l] See p. 167. vol. 1.

(as

(as was hinted before,) that would weigh with the conſcientious, amongſt the oppoſite parties, whom our author was deſirous to convince: and it is manifeſtly for the ſake of theſe perſons, that he doth ſo often ſhew the reſemblance of the engliſh government to that of the Jews; wherein he always treads in the ſteps of the learned Mr. Selden. At the ſame time it muſt be confeſſed, and later days have proved, that any connection between the religious, and political notions of the two extreme parties, was entirely accidental. For as on the one hand, the epiſcopal clergy have made very memorable ſtands, both before and ſince the reformation, in favour of magna carta, and the liberty of the ſubject; whilſt in their turn the preſbyterian, and independent clergy, have been found not unſuſceptible of the higheſt notions of perſonal power: ſo alſo inſtances are not wanting of the two extremes, viz. democracy, and abſolute monarchy, having been aſſerted, without a viſible reference to any religious principles whatſoever.

I have the pleaſure to aſſure any readers of this claſs, that they will find themſelves not neglected in the following ſheets. For it may be ſuppoſed to be for their ſakes, that our author has alſo launched forth into the wide ocean of general argument. Ingenuous readers will here find the ſtores of the antient, and modern world, ranſacked for their entertainment; philology, hiſtory, law, politics, and a conſummate experience of affairs, diſplayed before them: and it will be hard if thoſe, who ſeek it, do not find improvement; which is the invariable point of our author. If ever he ſeems to trifle; for inſtance, when he condeſcends to amuſe himſelf with etymologies, according to the faſhion of the times: it is to introduce ſome uſeful admonition, which is thereby rendered the more ſtriking. But ſuch paſſages may be left to the obſervation of the reader.

Having thus authenticated the preſent book; and given reaſons for the title it now bears, by a brief expoſition of the ſubject: I will proceed to ſome more general obſervations.

It appears, from the foregoing particulars, that civil polity is the ſubject of the preſent work; and that the branch of that ſcience herein more particularly diſcuſſed, is that mixed diſtribution of civil power, which the author conceives to be the conſtitution of theſe kingdoms. His manner of treating this ſubject is popular, for general reading. But it is a great advantage to have a conſtant eye to the principles, and order of ſcience; and any thing of demonſtrative argument can only ariſe from a reference to them, either expreſſed, or implied. The antients, who are ſuppoſed to be the beſt maſters of ſcience, have been very accurate in this of politics; as far as their knowledge of the origination of mankind would ſuffer them to go. They uſed the word politics in a much larger ſenſe than it is now underſtood, for the whole ſcience of practice [m], or action amongſt men; as oppoſed to ſpeculation [n]: comprehending therein the three great rules of acting, whether as man ſimply; or as man, connected in a family; or as man, member of a civil ſtate [o]. Theſe three rules or lines are ſo connected in the order of principling, and generation, that they ſeem to form one great circle; in the circumference of which three points may be diſtinguiſhed. The firſt is the doctrine of morals in an individual, ethics proper, being the point from whence the motion begins; delineating the due happineſs of man, with the true means to that happineſs. The ſecond is the doctrine of a houſe, œconomics; tracing further the due happineſs of a family, with the true means to that happineſs. The third is the doctrine of a civil ſociety, politics proper; marking finally the due happineſs of a vicinity of families united in an orderly conſti-

[m] πρακτικὴ. [n] θεωρητικὴ. [o] Ariſtot. Ethic. Nichomach. l. 1. c. 2. & l. 10. c. ult. alſo, Magn. Moral. l. 1. c. 1.

tution,

tution, and equitable adminiſtration of civil government, as the true means to that happineſs. The perpetuity of rational happineſs is the perfection of it: and therefore, whatſoever the form of civil government may be, or the order of command and ſubjection eſtabliſhed as means to the end; it ſeems to be common to every form, that a ſufficient care be taken of the education of all the children of the ſociety, in thoſe eſſentials which belong to them as rational creatures. Which laſt part of the true means of political happineſs may be ſaid to complete the circle; for it terminates in the point from whence the motion began, the due happineſs of the individual.

The idea of happineſs, (ſtated by the philoſopher [p],) is a comprehenſion or completion [q] of the three kinds of good; viz. that of the mind, which he calls the firſt in power and influence; 2. thoſe of the body, which are health, ſtrength, beauty and other concomitants; and 3. externals, which are wealth, kindred, eſtimation and the like. But this idea of human happineſs, great as it is, receives a high and infinite improvement from the chriſtian plan.

I ſuppoſe therefore, that it would be no advantage to the ſcience of politics, if there were any who ſought to ſeparate it from morality; or who ſhould be pleaſed to deny, that the ſame line of equity, or juſtice, runs through the whole. For a family; though it conſiſt of various human individuals, in an order of command and ſubjection, is but one family; and a civil government, though it conſiſt of various families, in an order of command and ſubjection, is but one civil government. And a civil government hath even more of unity than a family can have; becauſe the differences of it's members are leſs eſſential, or leſs founded in na-

[p] See Diogen. Laert. p. 121. edit. Lond. 1664.

[q] συμπλήρωμα.

ture: being very much accidental, from what is called fortune; and not reaching neceſſarily to the underſtanding, and powers of individuals. A civil government is alſo more equitable than that of a family, as it is freed from divers frailties which operate with leſs reſerve, and are too apt to diſorder the rule of the domeſtick. In this notion of the uniformity, and univerſality of juſtice and equity, we may go yet higher; and affirm, that the jus gentium, between nation and nation, is the very ſame with that between man and man: with this additional advantage, that it may be ſuppoſed to be yet more perfect; as it is more free from perſonal frailty; and from other differences whether natural, or accidental, in the aggregated units. And it is to be noted, that the operation of this equity is as univerſal as the thing itſelf: for any obſtruction, or denial of it, is permanently impulſive to evil; and on the other hand, any forwarding, and affirmation of it, is permanently impulſive to good.

It hath been a great queſtion amongſt ſpeculative politicians, (to uſe the word in it's ordinary ſenſe,) what mode or diſtribution of civil power is the beſt; i. e. the moſt conducive to the ends of civil ſociety, which are the good of the whole. The modes which have been experienced in the great theatre of the world are either pure, or mixed. The pure diſtributions are three, viz. a monarchy, or an ariſtocracy, or a democracy: the mixed diſtributions are a compound of any two of the former; or, of all three. Inſtances of each of theſe occur in the hiſtories of antient Greece, and Rome; with the defects to which they are reſpectively liable, and the fatal wounds which thoſe defects have ultimately given to each ſort of government. It may however be proper to obſerve, that we have the teſtimony of Photius (who lived in the 9th century,) that the antients never arrived at the perfect comprehenſion, or mixed diſ-

tribution, of civil power. For that learned author ſays, that there "was read to him a dialogue concerning the art or ſcience of poli-"tics, in which the ſpeakers are Menas, a ſenator, and Thomas, "a chancellor. This dialogue is divided into ſix converſations, "wherein is introduced a form of government different from thoſe "deſcribed by the antients; which new form is called the govern-"ment or rule of juſtice, a dikæarchy: and the dialogue finds "fault, juſtly enough, with the republick of Plato. It is fur-"ther declared, that the form of government here introduced "ought to be compoſed of the three pure forms; viz. the "royal, the ariſtocratic, and the democratic: ſelecting from "each form what is perfect therein; and thus finiſhing, and com-"pleting that civil government, which is truly the beſt." Hitherto the learned patriarch [r].

There is a paſſage in king Charles the firſt's "declaration, and anſwer to the nineteen propoſitions," which has a very ſtriking reſemblance to this of Photius; and is an intereſting exemplification of it. Of this the reader may judge, who will be pleaſed to compare the ſaid paſſage, as quoted in the 93 chapter of the following work [s], with the text of Photius.

It is, therefore, the happineſs of our preſent age and nation, to be in the actual poſſeſſion of that beſt form of civil government, after which other politicians have ſo much inquired. Thoſe who

[r] Ἀνεγνώσθη περὶ πολιτικῆς, ὡς ἐν διαλογῳ Μηνᾶν παλρίκιον, και Θωμᾶν ραιφερενδάριον, τὰ διαλεγόμενα εἰσάγων πράσωπα. Περιέχει δὲ ἡ πραγμάλεία λόγυς ἓξ, ἐν οἷς καὶ ἕτερον ἶδος πολιτείας παρὰ τὰ τοῖς παλαιοῖς εἰρημένα εἰσάγει, ὃ καὶ καλεῖ δικαιαρχικόν· ἐπιμέμφεται δὲ τῆς Πλάτωνος δικαίως πολιτείας. Ἦν δ'αὐτοὶ πολιτείαν εισάγουσιν, ἐκ τῶν τριῶν εἰδῶν τῆς πολιτείας, δέον αὐλὴν συγκεῖσθαί Φασι, βασιλικῆ καὶ αριϛοκραλικοῦ καὶ δημοκρατικῆ· τὸ εἰλικρινὲς αὐλῇ ἑκάϛης πολιτείας συνεισαγάϛης, κακείνην τὴν ὡς ἀληθῶς ἀρίϛην πολιτείαν ἀποϛελούϛης. Photii Bibliotheca, n. 337. p. 23. edit. Andr. Schotti, 1611.

[s] Vol. 2. p. 308.

have

have looked into the laws, and hiſtory of England, muſt have had very intereſting ſenſations when they have obſerved the various fluctuations of civil power amongſt us; 'till the laſt ſolemn recognition, and eſtabliſhment thereof at the revolution, in the year 1688. And ſuch readers as take a pleaſure in noting the operations of providence, in their order of cauſing, cannot fail to remark the ſhare which our author, and ſome writers his contemporaries particularly the reverend Mr. George Lawſon[t], ſeem to have had in that memorable event, which is the golden epoch of britiſh happineſs; and the true date of the race of our conſtitutional kings who are, in truth and fact, the greateſt kings in the univerſe. By this event, the ſubjects of real, and of perſonal greatneſs[u], were ſeverally declared: and each had their reſpective properties aſſigned to them. In brief, the great boundary between conſtitution, and adminiſtration, was ſolemnly recognized, and eſtabliſhed. For all which I beg leave to refer to the convention act, and ſubſequent act of ſettlement, as the rule to which every thing our author, or any other hitherto hath ſaid, muſt be brought; and by which, it muſt be meaſured. The ſalutarineſs of the acceſſion to this great event, in the union of Scotland which former times had deemed impoſſible, is undeniable: and any further union, for the good of the whole, may be ſafely truſted to the great wiſdom that preſides in theſe kingdoms.

It remains 2dly, that ſomething more particular be ſaid of the perſon, and family, of the author of the following ſheets.

Mr. Anthony Wood has collected the principal facts of Sir Bulſtrode Whitelocke's life[w]: and perhaps they would not have ſuffered greatly, if they had not been accompanied with ſome im-

[t] Politica ſacra, & civilis; 4to London, 1660; & 8vo 1689.
[u] See Lawſon, where above, p. 54—57. edit. 1689.
[w] Athenæ Oxonienſes, vol. 2. p. 545—548. edit. 1721.

proper

proper reflections. Sir Bulſtrode himſelf has furniſhed many other valuable materials, in his memorials of his own times. We find in the book entitled "the lives of the lord chancellors of England [x]," a very inſtructive life of our author, formed from the preceding ſources; which fills almoſt the whole ſecond volume of that work, as the firſt volume is taken up chiefly by that of lord Clarendon; between whom as contemporaries, and diſtinguiſhed actors in oppoſite parties, a parallel is drawn at the end of the ſecond volume. From theſe three works, the lives in the biographical dictionaries ſeem to have been extracted; and that in the laſt volume of the Biographia britannica [y] is very circumſtantial. Such as have the opportunity of peruſing all the ſaid books will have great pleaſure. And for the ſake of others who have not the leiſure that is neceſſary, I beg leave to ſubjoin the greateſt part of the text of the laſt: omitting the notes, as I would not prejudice that uſeful work; and leaving the facts to ſpeak for themſelves.

Our author, Sir BULSTRODE WHITELOCKE, or Lord Commiſſioner Whitelocke as he is ſometimes called, (an eminent lawyer in the laſt century,) was the ſon of Sir James Whitelocke, knight, one of the juſtices of the king's-bench; by Elizabeth his wife, daughter of Edward Bulſtrode, of Hugely or Hedgley Bulſtrode, in the county of Buckingham, eſq; He was born Auguſt 6, 1605, in Fleet-ſtreet, London, in the houſe of Sir George Croke his mother's uncle, afterwards one of the juſtices of the common-pleas; and was educated, in grammar learning, in Merchant-taylors ſchool. When he had properly improved himſelf there, he was admitted, in michaelmaſs term 1620, a gentleman commoner of St. John's college, in Oxford: at which time he was principally recommended to the care, and overſight, of his father's contemporary and inti-

[x] 2 vols. 8°. printed, London 1708. [y] Folio, London, 1766.

mate

mate friend Dr. Laud, then preſident of that houſe; who ſhewed him many kindneſſes. In return for which many years after, when Dr. Laud, then archbiſhop of Canterbury, was to be brought to his tryal; Mr. Whitelocke refuſed to be in the number of the committee appointed by parliament to draw up a charge againſt him. Having laid a good foundation of general learning, he quitted the univerſity without taking a degree; and went to the middle temple where, by the help of his father, he became a great proficient in the common law: not neglecting, at the ſame time, every other branch of polite, and uſeful literature. In the midſt of his more ſerious ſtudies he ſhewed a gallant turn of mind; by being one of the chief managers of the royal maſque which was exhibited by the inns of court, in February 1633, before king Charles I. and his queen, and their court, at Whitehall. To him in particular was committed the whole care and charge of the muſic for this great maſque; which was ſo well performed, that it excelled any muſic that had before that time been heard in England.

Being a counſellor at law, he delivered with great applauſe, though unprepared, a charge at the quarter-ſeſſions at Oxford in 1635: and was often conſulted by John Hampden eſq; when he came to be proſecuted for refuſing the payment of ſhip-money. At the beginning of the commotions in Scotland, he wanted not ſolicitations on behalf of the covenanters: but he perſuaded his friends not to foment thoſe growing public differences; nor to be any means of incouraging a foreign nation, againſt their natural prince; from whence he feared great, and evil conſequences. He was choſen one of the burgeſſes for Marlow, in the long parliament which met November 3, 1640. Towards the beginning of the ſeſſion, a debate ariſing about the writs of Habeas corpus upon which Mr. Selden, and other members, (who had been committed for

for their freedom of ſpeech in the parliament of 1628,) had demanded to be bailed, but were refuſed: this was ſo far aggravated by ſome, that they moved Mr. Selden, and the reſt, might have reparation out of the eſtates of thoſe judges who then ſat in the king's bench. And they being named to be Hyde, Jones, and Whitelocke; our young member ſtood up in defence of his father, and vindicated him from the fact alledged. When the earl of Strafford came to be impeached, by the commons, of high treaſon; Mr. Whitelocke was choſen chairman of the committee appointed to draw up articles, and manage the evidence againſt him. All the papers relating thereto were delivered into his cuſtody; but a very material one was conveyed away by the lord Digby, to the earl, which brought a ſuſpicion of treachery upon Mr. Whitelocke: tho' he was ſufficiently cleared afterwards, when a copy of that paper was found, in lord Digby's hand writing, in the king's cabinet at the battle of Naſeby.

In 1641, during the debates about the militia, he made an excellent ſpeech; wherein he declared it as his opinion, that the power of the militia was neither in the king alone, nor in the parliament; but jointly, in both. All accommodations about that important matter being found impracticable; which Mr. Whitelocke appears to have earneſtly wiſhed for; and he, being apprehenſive of the enſuing miſeries and troubles, ſpoke againſt raiſing an army for the defence of the parliament, and ſenſibly deſcribed the calamities of a civil war. However being perhaps unwilling to ſee, what he thought, the moſt valuable rights of the nation tamely loſt; he accepted of the office of deputy lieutenant of the counties of Bucks, and Oxford, in 1642; and, together with Mr. Hamden, diſperſed the commiſſioners of array at Watlington. Alſo, having a gallant company of horſe of his neighbours under his command, he

marched to Oxford, of which he was named a fit perſon to be governor; and propoſed the ſecuring of that important place: but his advice was not followed. About the end of October, his ſeat at Fawley-Court was rifled and plundered, by a party of prince Rupert's brigade; which, as he ſays, he remembered only to raiſe a conſtant hatred of any thing that may, in the leaſt, tend to foment ſuch unhappineſs, and miſery: and in November, he appeared among thoſe forces that oppoſed the king, at Brentford. In January 1642-3, he was one of the commiſſioners at the treaty of peace at Oxford, wherein a good deal of the buſineſs lay upon him; and he had a great ſhare of favour, and reſpect, from his fellow commiſſioners. Upon all overtures of peace, he induſtriouſly laboured to promote them; which might be ſome ground of his being ſo often employed by the parliament, in their treaties. In March, the lords having propoſed, that a new committee ſhould be named, to conſider of propoſitions of peace; and the commons inſiſting to have that matter referred to a committee of both kingdoms: Mr. Whitelocke obſerved, that in the debate ſome were averſe to any propoſition at all for peace; which induced him to make an excellent peaceful ſpeech.

He was a member of the aſſembly of divines: and in their debates for ſettling the government of the church, delivered his opinion againſt the divine right of preſbytery: which notion he afterwards oppoſed in the houſe of commons, and prevented them from being ſurprized upon this great queſtion; for which he received thanks. In 1644, he was conſtituted lieutenant-governor of Windſor caſtle. Both houſes of parliament having, at length, agreed upon the propoſitions for peace; Mr. Whitelocke was appointed one of the committee to carry them to the king, at Oxford. His majeſty ſeemed to expreſs a particular regard for him; ſtiling him and Mr. Holles, meſſengers of, and wiſhers to, peace. And when they were about coming

coming away, the king desired them to set down, in writing, what they apprehended might be fit for him, to return, in answer to their message; and was in their judgements likely to facilitate the good work of peace. Accordingly, going into a private room, he wrote down, not in his usual hand, what he and Mr. Holles judged to be fit for the substance of his majesty's answer, to the proposals of peace they had brought; and left it upon the table of his withdrawing room.

But this affair had like to have proved their ruin. For it coming to the knowledge of the lord Saville, who was then with the king at Oxford, and revolted afterwards to the parliament; that inconstant lord sent to the commons an accusation of high treason against Mr. Holles, and Mr. Whitelocke, on account of that paper, the second of July 1645. They were persecuted with all eagerness; and defended themselves with so much constancy, mutual fidelity, and convincing evidence; that after a long, and strict examination, they were clearly acquitted by a vote of the house, on 21st July, of any misdemeanor in this business; and left at liberty to prosecute if they pleased, for damages, the lord Saville then a prisoner in the Tower.

To return to some particulars that happened in the mean time.

The scottish commissioners finding that Oliver Cromwell, by some words he had dropped, was no friend to their nation, nor the government of their church; and the lord general Essex growing jealous, that he was endeavouring to supplant him: a private consultation was had, whether he could not be proceeded against as an incendiary. Mr. Whitelocke, who was present, declared it as his opinion that he could not. Mr. A. Wood says, that he gave Oliver

timely notice of the deſign; and thenceforth became very gracious with that moſt active perſon. But he ſays himſelf; that at this debate, ſome who were preſent were falſe brethren, and informed Cromwell of all that paſſed among them. He was not for the ſelf-denying ordinance, and made a ſpeech againſt it. In the beginning of the year 1645, he was appointed one of the commiſſioners at the treaty of Uxbridge, and attended there. And on the 6th of Auguſt following, when the houſe of commons was in debate about ſending propoſitions of peace to his majeſty; he furthered them, as much as he could. He had been, the laſt year, nominated attorney of the duchy of Lancaſter. On the 15th April 1645, he was made one of the commiſſioners of the admiralty: and December 16th, ſteward of the revenues of Weſtminſter college. When the preſbyterians were ſtriving to have the power of excommunication, and ſuſpenſion from the ſacrament, veſted in themſelves; he oppoſed it in the houſe of commons: for which they cenſured, and termed him a diſciple of Selden, and an eraſtian.

Upon ſeveral occaſions, he ſhewed himſelf a lover of learning. As for inſtance, in order to preſerve the lord keeper Lyttleton's books, and manuſcripts, from being ſold and diſperſed by the ſequeſtrators, as they would have been; he procured an order from the houſe of commons, that ſuch as could be diſcovered ſhould be beſtowed upon him: and by that means he ſaved them, to have the preſent uſe of them; reſolving whenever there was an happy accommodation, to reſtore them to the owner, or to ſome of his family. Neither was he leſs uſeful in preſerving the Heralds office; being one of the committee, and very active in promoting the ordinance, for ſettling and regulating that office; though great oppoſition was made by the lower levelling claſs of the then ruling powers, who were but of yeſterday. He cauſed alſo the manu-

ſcripts, and books at Whitehall, (becauſe of the ſoldiers being there) to be removed to St. James's houſe; that thoſe rare monuments of learning, and antiquity, might be preſerved.

At the ſiege of Oxford, (where he occaſionally attended general Fairfax, and was admitted to his councils of war;) being a friend to the univerſity wherein he had been educated, and undeniably a man of conſiderable learning: he uſed all his intereſt to have honourable terms granted to the beſieged garriſon; and that the colleges, and libraries ſhould not be hurt, or plundered. In October 1645, he appears to have reſorted with Sir Henry Vane, and "other grandees of that party; and was kindly treated by them, as he uſed to be by the other;" to uſe his own words. In June 29, 1646, he was one of the ſelect council ordered, by general Fairfax, to conſult about ſeveral ſieges; and was made uſe of as their ſecretary: and he kept a ſtrong garriſon in his ſeat of Phyllis-Court, for the uſe of the then prevailing powers. In December 1646, we find him earneſtly promoting the ordinances, for taking away all coercive power of committees; and all arbitrary power from both, or either of the houſes of parliament, or any of their committees, in any matter between party and party: judging that to be for the honour of the parliament; and the eaſe, and right of the people. And being well ſkilled in foreign affairs, he was uſually in every committee relating to them. At the ſame time he applied himſelf cloſely to his practice of the law; and attended the aſſizes, much to his profit, as may be ſeen in his memorials.

When his old friends Sir Philip Stapleton, Denzil Holles Eſq; recorder Glyn, and others came to promote eagerly the diſbanding of the greateſt part of the army; he declared againſt that meaſure: believing, as he ſaid and, very likely, knew, that the army would not

not ſubmit to it; and ill conſequences might follow. This highly ingratiated him with "Cromwell, and that party; who entertained "him with all reſpect and affection, and highly courted him." His friends in the houſe of commons, and ſome others who would have been rid of him, moved that he might be ſent lord juſtice into Ireland, to exerciſe the civil government; but he was not free to undertake that charge. And now Cromwell, and his adherents, were againſt his going away, and more than formerly deſired his company; and began to uſe his advice in many things. In September 1647, the city of London were very deſirous of having him for their recorder; which he declined. And December 5, the ſpeaker of the houſe of commons not being well, and our author being informed by his friends, that in caſe the ſpeaker ſhould continue ill, they would call him to the chair to ſupply that place; to avoid it, he withdrew himſelf from the houſe, and went home.

In March 1647-8, he was appointed one of the three commiſſioners of the great ſeal; for one whole year. Theſe commiſſioners were ſaid to be agreed upon before-hand, by a private junto of Cromwell's party. He was ſworn into his office April 12th, with a ſalary of 1000 pounds a year; and took much contentment in the privacy, and credit of it. On the 17th, he reſigned his place of attorney of the duchy of Lancaſter. He gives us a remarkable inſtance of his own, and fellow commiſſioners, moſt laudable and exemplary diſpatch in the chancery buſineſs: that in the morning of one day they determined thirteen cauſes, and forty demurrers in the afternoon; and ſometimes ſat from five o'clock in the morning, till five in the evening. According to his own account, he was no gainer by accepting of the place of commiſſioner of the great ſeal: for the profit of it was not above 1500l. a year; whereas his practice, in the law, brought him before near 2000l. per annum.

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He thought himſelf but unfixed, and unſettled in that high poſt; looking upon the ſelf-denying ordinance, debated in parliament 6 Auguſt 1648, as a deſign to remove him. And ſuch a deſign appears in October following, when he was ordered by the houſe to be one of the ſerjeants at law then called, and attorney-general of the duchy: though in words, the houſe did expreſs much favour, and reſpect to him; and their compliments were too high for him to remember.

The army's force upon the houſe of commons drew ſome ſerious reflections from him. And he had no great mind to ſit in that houſe, as it was then conſtituted. He was one of the committee of thirty-eight, named to conſider of drawing up a charge againſt king Charles I. but he never attended; being reſolved to avoid meddling in that bad affair: and therefore he went into the country, on purpoſe to be out of the way, and not be liable to be overperſuaded or compelled. But, before that, he had aſſiſted at a meeting of ſome of the members of the houſe of commons, to conſult about ſettling the kingdom by parliament; and not to leave all to the ſword. He returned to London, January 9th 1648-9, after the king's trial was begun; though he ſeemed not to be concerned in it: and refuſed, afterwards, to approve the proceedings of the high court of juſtice. But he had meetings and free diſcourſes with Cromwell, about the then affairs, and actions of the army; and the ſettlement of the kingdom.

February 1, he declared, in the houſe of commons, his diſapprobation of the vote of December 5, 1648, "that his majeſty's conceſſions to the propoſitions of the parliament, were ſufficient grounds for ſettling the peace of the kingdom." And on the 6th "it was put upon him to draw an act to take away the houſe of

lords: wherein he desired to have been excused, in regard he was not in the house when the vote passed, and had declared his opinion against it; but could not get excused."

February 8, he made a speech, extant in his memorials, to excuse himself from being made one of the new lords commissioners of the great seal: but notwithstanding this, he was voted to be one, nemine contradicente. He says, that 'being beforehand acquainted that he 'was to be named; he had often advised with his friends about 'it: and that the most considerable particulars,' (which seem to have been urged by his friends,) were; that 'he was already very 'deeply engaged with this party; that the business to be under-'taken by him was the execution of law and justice, without 'which, men could not live one by another; a thing of absolute 'necessity to be done.' He adds, that many objections also were made against his accepting this place; which are mentioned in the speech. The 14th of February, 1648-9, he was nominated one of the council of state; and March 16, (according to an order of the 14th,) "He brought in a draught, of a declaration, touching the proceedings of parliament in the late transactions: which, being committed, was made much sharper than he had drawn it; and divers clauses were added, which he thought matters fit to be omitted." June 13, he was chosen high steward of Oxford, in the place of the earl of Berks. On the 6th of July, he voluntarily surrendered his office of attorney of the duchy, which the house had bestowed on him. On the 30th of July, at the instance of the learned Mr. Selden, he undertook the care of the royal library, and medals at St. James's, in order to prevent a design formed by some to have them sold, and transported beyond sea; which he thought would be a dishonour and damage to this nation, and to all

all ſcholars here; and fearing, that in other hands they might be more ſubject to imbezzling: this trouble therefore he undertook, to preſerve them for public uſe[z]. John Dury, a German, a good ſcholar, and who had been a great traveller, was his deputy-librarian. September 26, he was appointed one of the governors for the ſchool, and almſhouſes at Weſtminſter: and in November following, oppoſed a motion made in the houſe of commons, that no lawyers ſhould be of the parliament. The year following, in the debates upon the act for putting all the books of the law, and the proceſs and proceedings in courts of juſtice, into the engliſh tongue; ſome having ſpoken in derogation, and diſhonour of the laws of England: the lord commiſſioner ſtood up in defence of them; and endeavoured to prove, that they were not introduced by William the 1ſt. September 9, 1651, he was appointed, with three other members of parliament, to go out of town to meet Oliver Cromwell on his way to London; and congratulate him, upon his victory at Worceſter.

All oppoſition being now fallen before Cromwell, he had a meeting, December 10, at the ſpeaker's houſe, with ſome members of parliament and officers of the army, to talk about the ſettlement of the nation; and probably, with a view to ſound their opinions, and inclinations. Our author, who was preſent, delivered his ſentiments to this purpoſe. 'The laws of England are ſo interwoven 'with the power, and practice, of monarchy; that to ſettle a go-'vernment, without ſomething of monarchy in it, would make ſo 'great an alteration in the proceedings of our law, that they had 'ſcarce time to rectify it; nor could they well foreſee the incon-'veniencies that would ariſe thereby. Therefore he added, that 'there might be a day given for the king's eldeſt ſon, or for the

[z] Vid. note [y], p. 279, vol. 2. of this book.

'duke of York his brother, to come in to the parliament: and, 'upon ſuch terms as ſhould be thought fit, and agreeable both to 'our civil, and ſpiritual liberties, a ſettlement might be made with 'them.' In November 1652, he repeated the ſame advice, in a private conference with Cromwell; wherein he diſſuaded him from aſſuming the title of king; and perſuaded him to enter into a private treaty with Charles II.

This propoſal was very unpleaſing, from the firſt, to Cromwell; who thence forward grew cool towards the lord commiſſioner, and had but little intercourſe, and correſpondence with him. In order to get him out of the way, and deprive him of his office of commiſſioner of the great ſeal; he was named one, and the chief, of the commiſſioners for the adminiſtration of the civil government in Ireland. Arguments were not wanting to urge him to accept of it; as the great command, the honour, and the conſiderable profit of that employment. But as he perceived the offer proceeded rather from ill, than good will; and that Cromwell was forward in it under hand, as not liking his advice abovementioned, and his noncompliance with his ſovereign pleaſure in ſome things, particularly in chancery cauſes: he at firſt diſcreetly excuſed himſelf from that ſervice, which would have been no advancement either to his honour, or profit; in a country too, which he did not like. And when he was rather over preſſed; he got himſelf off from being named, by a kind of reſolute denial. But not long after, Cromwell found occaſion, by an honourable employment, to ſend him out of the way: that he might be no obſtacle, or impediment, to his ambitious deſigns.

When the two commonwealths of England, and Holland, began to quarrel; and the right of the fiſhery, and dominion of the britiſh

britiſh ſeas, came under debate: the maintaining of thoſe priviledges was committed to our author, who better than any one was ſkilled in ſuch points; and, in the hiſtory, and antiquities of this nation. He was very uneaſy, and diſpleaſed, at the army's beginning to ſet up for themſelves, without the parliament; and always, and earneſtly, declared his judgment againſt this as the moſt dangerous, and moſt ungrateful thing that could be practiſed. The 20th April, 1653, he urged the ſame arguments, at a great meeting of parliament-men, and officers, in Cromwell's lodgings; and ſaid, that diſſolving the parliament would neither be warrantable in conſcience, or wiſdom. Again, when it was propoſed, that a number, about forty, of parliament-men and officers of the army, ſhould be nominated, and impowered by the parliament, for managing the affairs of the commonwealth till a new parliament ſhould meet; and ſo the preſent one to be forthwith diſſolved: he oppoſed this propoſal, and the more, fearing leſt he might be one of theſe forty; who he thought would be in a deſperate condition, after the diſſolution of the parliament. But notwithſtanding his own, and his party's endeavours, the parliament was diſſolved in a rude, and arbitrary manner by Oliver Cromwell. He did not proceed in the buſineſs of the great ſeal, till after Cromwell, and his council of officers, had ſet forth a declaration of the grounds and reaſons, for their diſſolving the late parliament; and that all civil officers ſhould proceed as formerly in the execution of their offices. Cromwell was ſo much offended with him, that he did not admit him into his firſt parliament, which aſſembled in July 1653; and his great commiſſion was ſuperſeded, by the vote for taking away the court of chancery.

To remove him yet further, the honourable employment (hinted at before) was contrived for him; as a kind of creditable exile:

that was an embaſſy to the famous Chriſtina queen of Sweden, to which he was nominated by Cromwell, September 4th, 1653, and voted in parliament ten days after. He received his commiſſion, and inſtruction, from the hand of the ſpeaker, the 29th October: and having very expeditiouſly prepared himſelf, he ſet out from London November 2d, embarked at Graveſend the 5th, ſailed the 6th, and after a difficult paſſage arrived at Gottenburgh the 15th. A few weeks after his departure, the parliament having reſigned up their power to the general Cromwell, he aſſumed the ſupreme legiſlative authority, under the title of lord protector of the commonwealth of England, Scotland, and Ireland; and publiſhed his inſtrument of government contrived, as is ſuppoſed, principally by our author.

This great alteration at home made no alteration in his conduct; but he proceeded vigorouſly in the affair of his embaſſy, notwithſtanding he met with great obſtructions from queen Chriſtina: who in his audiences, inſtead of hearkening to his buſineſs, entertained him with her notions of philoſophy; and, with balls, and diverſions. In other reſpects ſhe ſhewed him, and his ſons, great civility; and created him knight of the order of Amarantha, of which ſhe herſelf was ſovereign; and wore, as the badge of it, a rich jewel tied to a crimſon ribband under her left breaſt. And on account of this knighthood it was, that we find him called Sir Bulſtrode Whitelocke: which title is acknowledged by lord Sunderland, as ſecretary of ſtate under queen Anne, in the privilege prefixed to the memorials of engliſh hiſtory, printed 1709. Having overcome all difficulties; he concluded a firm alliance between England and Sweden, about the beginning of May 1654, before queen Chriſtina's reſignation of her crown. And immediately ſetting out upon his return home, he came to Hamburgh, June 10; embarked

at Glukſtadt the 17th: and after a dangerous paſſage, having ſtruck upon a ſand near Yarmouth, he arrived in England the 28th.

On the 6th of July he gave the protector, and his council, a circumſtantial account of his embaſſy: and was not only continued the firſt commiſſioner of the great ſeal; but was alſo appointed, Auguſt 4, one of the commiſſioners of the exchequer. He was alſo recorder of Briſtol. At the meeting of the protector's ſecond parliament, Auguſt 4, (in which he was choſen for the county of Bucks, and for the boroughs of Oxford and Bedford,) he carried the purſe before him: and on the 6th, gave a particular narrative to the houſe, of his negotiations at the court of Sweden; for which he not only received the thanks of the houſe, but had alſo 2000l. ordered him for arrears of the expences of his embaſſy, and as a teſtimony of their favour, and a reward of his ſervices; the payment of which however, was not made good till February 1656-7, with the addition of 500l. He was ſo diligent in his attendance upon parliament, and gained ſo great an intereſt in it; that Oliver became highly diſpleaſed with him, among the reſt. And he grew jealous of him, with many of his former friends: ſuſpecting that their deſign, at bottom, was to bring in the king; becauſe they declared for a truly free parliament, which was indeed the way for the king's reſtoration. And this, ſays he, began now to be held fit, and requiſite, by many ſober and faithful patriots; who were diſtaſted at Cromwell's private ambition, and inſolent domineering. After the diſſolution of this ſecond parliament, Cromwell and his council having framed an ordinance for the better regulating, and limiting, the juriſdiction of the high court of chancery: our author, and Sir Thomas Widdrington, made ſhrewd obſervations upon its inconveniencies; and declared, that the obſervation of it was contrary to their own judgments, and conſciences. Therefore, no

worldly

worldly conſiderations could prevail upon him, to execute an ordinance which he looked upon as illegal. Accordingly, on the 6th of June 1655, he reſigned the ſeal; for which he underwent various cenſures; but ſays, he never had cauſe to repent of that action. However he obſerves, that his fortunes and intereſt then decreaſed: and now his former pretended dear friends, and frequent viſitors, withdrew themſelves; and began neither to own, nor to know him. Such is the courſe of dirty worldlings!

But the protector, ſenſible of his harſh proceedings againſt him, for keeping to that liberty of conſcience which he himſelf held to be every one's right, and that none ought to ſuffer for; by way of recompence, made him one of the commiſſioners of the treaſury, with a ſalary of 1000l. per annum.

He alſo often adviſed with him, in his greateſt affairs: and he was faithful in his advice; though ſometimes leſs pleaſing to Cromwell than the counſel of ſome others who, for their private ends, would flatter him, and ſeldom differ from him in judgment; whereof he grew at laſt ſenſible. Particularly, the protector ſeldom omitted to conſult him about foreign affairs; wherein he thought him not unſerviceable, and did much follow his counſel.

Often did Sir Bulſtrode preſs him to have frequent parliaments; though contrary to the ſentiments, and perſuaſions, of others. But ſo far was he from taking it ill, that he conſtituted him, on the 2d of November, one of his council of trade; and nominated him, in the beginning of the year 1656, one of the embaſſadors extraordinary to Sweden. Though our author declined that employment; yet he accepted of the office of being one of the commiſſioners, to treat with the ſwediſh embaſſador then in England. And after long nego-

negotiations, of which we have a detail in his memorials; a treaty was ſigned, July 17, between the Engliſh and Swedes.

In the third parliament of Oliver Cromwell, which met September 17, Sir Bulſtrode was elected one of the knights for the county of Bucks; and ſupplied the place of ſpeaker, during Sir Thomas Widdrington's illneſs.

He did not chooſe to preſent, to the parliament, the humble petition and advice, &c. there being ſome things in it diſagreeable to him: but he was chairman of the committee appointed to confer with Cromwell about it; and he adviſed him, among others, to take the title of king. But Cromwell durſt not aſſume it; being awed by the commonwealth party, and the fears of a mutiny and defection from the greateſt part of the army, whoſe threats ran very high. At his ſolemn inauguration at Weſtminſter-hall, June 26, 1657; our author rode by his ſon Richard, in one of the boots of the ſtate-coach, with a drawn ſword in his hand. He ſeemed ſtill to be much in favour with the protector, who adviſed with him about the beſieging of Dunkirk, and other important affairs. And he perſuaded the protector, to further the relief of the poor perſecuted proteſtants in Piedmont. December 11, he received his writ of ſummons, as one of the lords of the other houſe.

When Cromwell was about diſſolving the parliament, he diſſuaded him from it; telling him the danger of frequent diſſolution of parliaments, and what ſtraits it would bring him into for money. But his advice was not received: nor his application ſucceſsful, when he aſked for the provoſtſhip of Eton college, a thing of good value, quiet and honourable, and fit for a ſcholar. Upon which occaſion he obſerves, that his ſervice was paſt; and therefore, no ne-

ceſſity of a recompence. So thinking himſelf neglected, and not being ſatisfyed with the public tranſactions; he lived much retired. April 23, 1658, he was one of the committee for hearing appeals from Guernſey, and Jerſey. And three days after, nominated one of the commiſſioners for the trial of Dr. Hewet, and other conſpirators; but he never acted in that high court of juſtice, it being againſt his judgment, as he had before declared. He alſo waved the place of governor of Dunkirk, of which overtures were made to him ſoon after. The laſt inſtance of the protector's favour to him, was his ſigning, Auguſt 21ſt, a warrant for a patent to make him a viſcount; but he did not think it convenient to accept of that honour.

The 22d January, 1658-9, Richard, the new protector, having a particular reſpect for him, made him one of the keepers of the great ſeal, without any ſeeking of his own: and he was one of his lords of the other houſe. The protector conſulting him, with others, April 21ſt, whether it were not fit to diſſolve his parliament; he, the lord commiſſioner, doubted the ſucceſs of it: and wiſhed they were permitted to ſit a little longer, eſpecially when they had begun to conſider of raiſing money, whereby they would engage the army. But the general council of officers having taken a reſolution to diſplace Richard, at that critical time our author was wary what to adviſe in this matter; but declared his judgment honeſtly, and for the protector's good, when his advice was required. After the officers had aſſumed the government without a ſingle perſon, kingſhip, or houſe of peers; his office of commiſſioner of the great ſeal ceaſed: but he was named one of the council of ſtate, May 13.

In

In thoſe diſtracted times, he was accuſed of holding a correſpondence with Sir Edward Hyde, and other friends and miniſters of Charles II. but he poſitively denied it; and deſired no favour if they could prove any ſuch thing againſt him; ſo the matter dropped. On the 5th June, he was named commiſſioner, with Algernon Sidney, and Sir Robert Honeywood, to go and mediate a peace between the kings of Sweden and Denmark: but diſliking Sidney's haughtineſs, and overruling temper, he got himſelf excuſed from that troubleſome buſineſs.

Being preſident of the council of ſtate, he was very active in taking meaſures to ſuppreſs the inſurrections of Sir George Booth, and others about that time. And September 3, joined in the votes that were paſt for an engagement to be taken by military officers, to renounce the pretended title of Charles Stuart, and the whole line of king James; and of every other perſon, as a ſingle perſon, pretending to the government of theſe nations. About this time he was promoting an union between the kingdoms of England and Scotland; for which he brought a bill into parliament the 30th of July. General Monk hearing, that the conduct of that union was left to our author; he ſent him letters of high compliment, wherein he wiſhed he might ſee him in Scotland. Happy would it have been for him had he accepted of that invitation; as moſt probably a man of his good ſenſe would have joined the general in the king's reſtoration. But his ill fate kept him at home; where, October 22d, he was nominated one of the committee of ten, to conſider of fit ways to carry on the affairs of the government; and the 26th of the ſame month, one of the twenty three members of the committee of ſafety, for the preſervation of the peace, and management of the preſent government; as alſo for the preparing of a form of government for theſe nations upon the foun-

dation of a free ſtate. This charge he ſays he accepted, upon the earneſt ſollicitation of his friends, to preſerve the magiſtracy, miniſtry, and the law. November 1, the great ſeal was put again into his hands: and November 16, he was appointed one of the committee of nineteen, to determine the qualifications of members of parliament.

General Monk, and many of his officers, having now declared for the remains of the long parliament, againſt the officers of the army in England: the committee of ſafety iſſued out commiſſions for raiſing new forces; and the lord commiſſioner accepted of one for a regiment of horſe. To counterbalance Monk's endeavours and proceedings, he and ſome of the principall officers repreſented November 8, to the lord mayor, and common council of London, that the bottom of his deſign was to bring in the king by a new civil war; the danger of which to the city, and nation, he repreſented: and adviſed them to provide for their own ſafety, and to unite for the preſervation of the peace, and the ſafety of the whole nation. And when Lambert, deluded by Monk's pretenſions of peace, ſtopped the march of his forces northward; our author foreſeeing, that Monk only ſought delays, till he could bring up his army to London, wrote to Lambert, to advance ſpeedily with all his forces, and endeavour to attack Monk, and bring the matter to an iſſue before he was better provided: but his advice was not followed.

The various tumults and inſurrections, almoſt in every part of the nation, now filled him with the utmoſt perplexity, and diſtraction. He wiſhed himſelf well out of theſe daily hazards, and knew not how to get free of them. He much furthered the meeting of a new parliament; a proclamation for which came out the

15th of December. But being hurried with the repeated, and certain advices, that Monk's deſign was to bring in the king, without any terms for the parliament party; whereby all their lives and fortunes would be at the mercy of the king, and his adherents, who were ſufficiently enraged: he went December 22, to Fleetwood, and propoſed to him this alternative; either to order all his forces to be drawn together, and himſelf and his friends to appear at the head of them, and ſee what ſtand they could make; or elſe immediately to ſend ſome truſty perſon to the king, with offers of his own, and his friends ſervices for reſtoring the king to his right, and that upon ſuch terms as the king ſhould agree upon; and he offered to go himſelf. But Fleetwood refuſing to do it without Lambert's conſent, who was at too great a diſtance; this propoſal dropped. The next day colonel Ingoldſby, and others, intimated to him, that his condition required he ſhould go to the king with the great ſeal; which overture he did not however comply with.

The remains of the long parliament being aſſembled December 26, our author found that he was to expect no quarters from them; Scot, Nevil, and others having threatned to take away his life; and Scot in particular having ſaid, that he ſhould be hanged with the great ſeal about his neck for having acted in the committee of ſafety. Therefore he thought it ſafeſt not to appear in the houſe. However the ſpeaker having, by letter, required his attendance and uſed alſo perſuaſions; he came to the houſe for about two days. But obſerving that many of his old acquaintance looked very cool upon him; and being informed of a deſign of ſome in the houſe to queſtion him, and have him ſent to the Tower: he thought fit to provide for his own ſafety, by retiring privately to a friend's houſe in the country. Before that he left order with his wife to carry the great ſeal to the ſpeaker; which ſhe did locked up in a deſk,

and gave him the key. She alſo burnt many of his papers relating to public affairs, which the author ſeems to lament, as it was the occaſion of his memorials being leſs perfect than he wiſhed them to be.

Such was the concluſion of the lord commiſſioner Whitelocke's various acting on the buſy ſcene of this world. He ſpent the remaining fifteen years of his life in a peaceable retirement, moſtly at Chilton Park in the county of Wilts; where he died of the ſtone, July 28, 1675; and was buried at Fawley, near Marlow in Buckinghamſhire, in an iſle adjoining to the church, which he had built for a burying place for his family. It is ſaid he waited on the king after his reſtoration, to beg his pardon for all he had tranſacted againſt him; and that his majeſty bid him, go live quietly in the country, and take care of his wife and ſixteen children. He had two wives. The firſt was Frances, daughter of William lord Willoughby of Parham, by his lady Frances, daughter of John earl of Rutland: ſhe died May 16, 1649. His ſecond wife was Rebecca, daughter of Thomas Bennet, alderman of London.

HAVING thus performed what was propoſed, by way of introduction; viz. premiſed certain particulars which relate to the following book, and to the author thereof: I beg leave to conclude with the following fragment.

" It ſeems to me, that the natural Juſtice, which is a duty " of man, ought to be ſtyled the parent, and nouriſher, of every " other virtue. And aſſuredly, without this habit, a man can " neither moderate his deſires, nor be brave, nor wiſe. For it is " a harmony, and peace, of the whole ſoul; with a full concert of " words, and actions. And the dominion of ſuch a habit may be ren- " dered more conſpicuous, if we examine the other habits of virtue.

" For

" For the good of theſe is private, reſpecting the individual; but " the good of natural juſtice reſpects whole ſyſtems, and through- " out the univerſe."

" In the celeſtial ſyſtem of the world, as it marſhals out the " univerſal rule of things, which are thus decreed by God; it is " providence, and harmony, and right. In a civil ſtate, it is juſtly " called peace, and good order. In a domeſtic ſtate, it is the like " mindedneſs of huſband, and wife, towards each other; the good " will of ſubordinate members, towards maſters; and the care of " maſters, towards ſubordinate members. In the body, it is health, " and ſymmetry of parts; which are principal things, and much " beloved by every living creature. In the ſoul, it is wiſdom; " that wiſdom which ariſes amongſt men, from the knowledge of " cauſes, and from natural juſtice."

" Since therefore, this habit doth thus inſtruct, and preſerve, the " whole and every part; rendering them all the ſame, in heart, and in " tongue: why may it not be ſaluted, by the univerſal voice; THE " PARENT AND NOURISHER OF EVERY OTHER VIRTUE [a]?"

C. MORTON.

Britiſh Muſeum,
April 23, 1766.

[a] Δοκεῖ μοὶ τῶν ἀνδρῶν τὰν δικαιοσύναν, ματέρα τε καὶ τιθηνὰν τῶν ἄλλων ἀρετῶν προσειπεῖν· ἄτερ γε ταύτας οὔτε σώφρονα, οὔτε ἀνδρεῖον, οὔτε Φρόνιμον διέντε εἶναι. Ἁρμονία γαρ ἔσι, καὶ εἰρήνα τᾶς ὅλας ψυχᾶς, μετ' εὐρυθμίας. Δηλοφανέσερον δὲ καὶ γένοιτο τὸ ταύτας κράτος, ἐταζουσιν ἁμῖν τὰς ἄλλας ἕξιας. Μερικὰν γὰρ ἔχονται αὐταὶ τὰν ὠφέλειαν, καὶ ποθ' ἕνα· ἁδὲ ποθ' ὅλα τὰ συσταίματα, καὶ ἐν πλάθει.

Ἐν κόσμῳ μὲν ὦν αὐτὰ ταὰν ὅλαν ἀρχὰν διαγραταγοῦσα, τᾶ πρόνοιά τε, καὶ ἁρμονία, καὶ δίκα, γένος τινὸς θεῶν ὕυτω ψαφιζαμένων. Ἐν Πόλει δὲ εἰρήνα τὲ καὶ εὐνομία δικαίως κέκληται. Ἐν δὲ οἴκῳ δ' ἐτὶν ἀνδρὸς μὲν καὶ γυναικός ποτ' ἀλλάλως ὁμοφροσύνα· οἰκετᾶν δὲ πολὶ δεσποτᾶς εὔνοια· δεσποτᾶν δε πολὶ θεράποντας εὐδεμονία. Ἐν σώμαλι δὲ πρᾶτα καὶ πᾶσιν ἀγαπαλότατα ζώοις, ἄτε ὑγίεια καὶ ἀρτιότας. Ἐν δὲ ψυχᾳ σοφία ἡ ἐκ τᾶς ἐπιςάμας τε καὶ δικαιοσύνας γενομένη παρ' ἀνθρώποις.

Ἡ δ' αὐτὰ τὸ ὅλον καὶ τὰ μέρεα, ὕλῳ παιδαγωγεῖ τε καὶ σώζει ὁμώφρονα καὶ πολάγορα ἀλλάλοις ἀπεργαζομένα· πῶς ὁ μάτηρ καὶ τιθηνὰ πασᾶντε, καὶ πάντων, παυψαφεὶ λέγοιτο; Polus Pythagoreus, Lu... us, apud Stobæum. p. 105. edit. Tiguri, 1559.

The AUTHOR's DEDICATION TO KING CHARLES II.

TO MY LORD THE KING.

Sr.

WHEN it was in the power of your Majeſty, and in the purpoſe of ſome men, to have taken my ſmalle fortune, liberty, and life from me; you were pleaſed moſt gratiouſly to beſtow them on me, and to reſtore me to a wife and ſixteen children who all joyne in our humble, and thankfull, owning of your mercy.

And God hath pronounced you bleſſed, and to receive mercy; for you have bin mercifull to many thouſands of your offending ſubjects. In which number I ranke myſelfe with pœnitence; and with ſtudy how to expreſſe a gratitude wherof my preſent meane, and yet troubled, condition allowes me no larger evidence than this preſent of a free will offering of the firſt fruits of my labours, to your Majeſty: not expoſed to others view, but gathered purpoſely, and tendered moſt humbly to your Majeſty; not in a præſumption of any thing worthy your acceptation, butt in a gratefull ſence of your goodnes to him who deſires to own it, with his own conviction and endeavour to convince others.

He

The AUTHOR's DEDICATION.

He hopes theſe Analecta in his own profeſſion will not be improper for his Prince's view; the ſubject therof being that Governement, wherof yourſelfe is the Head, and therin concerned more than any others: and that if ſomwhat heerin occurres in vindication of your Majeſty's Governement from calumnies, and ſcandalous invectives, caſt uppon it by ignorance and malice; and, to ſhew its dependance uppon the ſacred Politie; the unparallelled juſtice, and equality, of it; with its approbation, and continuance, under ſo many conqueſts, changes and ages, as have paſt under your royall Aunceſtors; with ſome reſemblances in other Governements; it will not be diſpleaſing to your Majeſty. To whom, if any ſyllable heere may be uſefull, or acceptable, I have my end: if not, I ſhall hope for my pardon, from your accuſtomed goodneſs; bicauſe my deſigne could be nothing elſe, butt to give a perticular teſtimony of the duety, and gratitude of,

Sire,

Your Majeſty's moſt humble

Moſt obliged,

And moſt obedient Subject,

BULSTRODE WHITELOCKE.

The Writt.

CArolus secundus Dei gratia Angliae, Scotiae, Franciae, et Hiberniae rex, fidei defensor &c. vicecom. Bucks salutem. Quia de advisamento et assensu concilii nostri, pro quibusdam arduis et urgentibus negotiis, nos, statum et defensionem regni nostri Angliae, et ecclesiae anglicanae concernen. quoddam parliamentum nostrum, apud civitat. nostram Westm. octavo die maii proxim. futuro, teneri ordinavimus; et ibid. cum magnatibus et proceribus dicti regni nostri, colloquium habere et tractar. Tibi praecipimus firmiter injungentes, quod fact. proclamat. in proxim. comitat. tuo, post receptionem hujus brevis nostri tenend. die et loco praedict. duos milites gladiis cinctos magis idoneos et discretos comitat. praedict. et de qualibet civitat. com. illius duos cives, et de quolibet burgo duos burgenses, de discretioribus et magis sufficientibus, libere et indifferenter per illos qui proclamat. hujusmodi interfuere, juxta formam statutor. inde edit. et provis. eligi; et nomina eorund. milit. civium et burgens. sic electorum, in quibusdam indentur. inter te et illos qui hujuscemodi electioni interfuerint, inde conficiend. sive hujuscemodi electi presentes fuerint vel absentes, inseri; eosq; ad dictum diem et locum venire fac. Ita, quod iidem milites plenam et sufficientem potestatem, pro se et communitat. comitat. praedict. ac dicti cives et burgenses pro se et communitat. civitatum et burgorum praedictor. divisim, ab ipsis habeant, ad faciendum et consentiendum his quae tunc ibid. de communi concilio dicti

regni nostri (favente Deo) contigerint ordinari, super negotiis ante dictis. Ita quod pro defectu potestatis hujuscemodi, seu propter improvidam electionem milit. civium aut burgens. praedictorum, dicta negotia infecta non remaneant quovis modo. Nolumus autem, quod tu, nec aliquis alius vicecomes dicti regni nostri, aliqualiter sit electus: et electionem illam in pleno comitatu factam distincte et aperte, sub sigillo tuo et sigillis eorum qui electioni illi interfuerint, nobis in cancellar. nostram, ad dictum diem et locum certifices; indilate remittens nobis alteram partem indentur. predictarum presentib. consut. una cum hoc breve. Teste meipso, apud Westmonasterium
die anno regni nostri decimo tertio.

It may be thus changed into the English.

CHarles the second by the grace of God of England, Scotland, France and Ireland, king, defender of the faith &c. To the sherife of Bucks greeting. Whereas by the advice and assent of our councell, for some great and weighty affayres, concerning us, the state, and defence of our kingdome of England, and of the church of England, we have ordeined our parlement to be holden att our citty of Westminster, on the eight day of may next insuing, and there to have conference and treaty with the great men and peeres of our said kingdome, we commaund you, firmely injoyning, that having made proclamation in your next countey court, after receipt of this our writt to be holden, you cause on the said day and place, two knights girt with swordes, the most fitt and discreete of the said countey, and of every citty of that countey, two cittizens, and of every borough two burgesses, of the more discreet and most sufficient, to be freely and indifferently chosen by those who shall be present att such proclamation, according to the forme of the statutes therof made and provided, and the names of the

said

ſaid knights, cittizens and burgeſſes ſo choſen, in certaine indentures between you, and thoſe who ſhall be preſent att ſuch election, to be therof made, whither the perſons ſo choſen be preſent or abſent, to be inſerted; and them you cauſe to come att the ſaid day and place. So that the ſaid knights have full and ſufficient power for themſelves and the commonaltie of the ſaid countey; and the ſaid cittizens and burgeſſes for themſelves and the commonalty of the ſaid citties and burroughs; ſeverally from them, to doe and conſent to thoſe things, which then and there by the favour of God, ſhall happen to be ordeined by the common councell of our ſaid kingdome, uppon the ſaid affayres; ſo that for default of ſuch power, or through improvident election of the ſaid knights, cittizens or burgeſſes, the ſaid affayres remaine not undone in any wiſe. And we will not, that you, or any other ſherife of our ſaid kingdome, by any means be choſen. And that you certify forthwith unto us into our chancery, att the ſaid day and place, the ſaid election made in full countey diſtinctly and openly, under your ſeale, and the ſeales of thoſe who ſhall be preſent att the ſaid election; ſending to us one part of the ſaid indentures annexed to theſe preſents, togither with this writ. Wittnes our ſelfe att Weſtminſter the day of in the thirteenth yeare of our reigne.

CHAP. II

Charles the second.

MY intended methode is to proceed uppon the words of the writ, as they lye in order; the firſt wherof are theſe. Charles[a] the ſecond &c. that is, Charles the ſon of Charles, or [b]Charles from Charles: and from that name ſome have given a praeſage of much power and greatnes in him that bears it, which I hope and heartily wiſh may be more and more increaſed in the owner of this name.

Our engliſh antiquary[c] fetcheth the name of Charles from the german language, from carl, which in their toung ſignifyeth, ſtrong, ſtout, couragious, valiant. This hath bin approved both att home and abroad, moſt agreeable to the temper and condition of our Charles, who hath given ſufficient evidence therof. The german antiquary[d] holds alſo the originall of this name to be from the antient teutonick, in which toung he ſaith it was att firſt, Gar-Edel, by abreviation whereof it became, Careal, and Carl, or Karle; that gar, which is alſo pronounced, car, ſignifies in that language, all, and edel ſignifies, noble; as ealman or edelman a nobleman; ſo Car-eal, or Car-Edel is as much as to ſay, all noble. And this I myſelfe, and very many other of his ſubjects have cauſe to acknowledge to be truely the diſpoſition of our Charles.

The Germans uſed to preferre the ſons of virtuous parents[e], becauſe they hoped that the ſons would be aemulous of their fathers

[a] Carolus ſecundus. [b] Carolus a Carolo. [c] Cambden's Remains, tit. Names. [d] Verſtegan, c. viii. p. 249. [e] Hinckmar. Epiſt. iii. c. 17. Quod virtutis eorum aemulos ſperarent.

virtues;

virtues; as Quintilian [f] obſerves ſons for the moſt are believed to be like to their parents and aunceſtors. And to the ſame ſence it is ſaid, [g] that the affections of the ſons uſe to anſwear the diſpoſitions of their parents. It is ſpoken in the commendation of Solomon, [h] that he loved the Lord, walking in the ſtatutes of David his father. [i] Jehoſaphat is alſo commended, becauſe he walked in all the ways of Aſa his father, he turned not aſide from doing that, which was right in the eyes of the Lord. And the like is obſerved in ſeverall other [k] places of the holy Scripture. Our Charles is truely the ſon of Charles, a ſecond Charles, inheritor of his fathers virtues, ſucceeding him in his royall qualities, as well as in his name and crowns: ſtrong, ſtout, couragious, valiant, all noble, as their name doth ſignify, a true deſcription of their mind, like that of Auſonius to Probus.

[l] The ſupream Ruler of the worlds great frame
Commaunds, that men be call'd by ſuch a name,
As with their manners ſignifies the ſame.

It is related of our antient Britiſh king Gurguntius, that throughout all things [m] imitating his fathers actions, he loved peace and juſtice. Our Charles not only imitates his father Charles in loving peace and juſtice, butt [n] follows his example and advice, and that of his heavenly father, in a high love and exerciſe of clemency and mercy;

[f] Lib. v. c. 10. Similes parentibus et majoribus ſuis filii plerumque creduntur.
[g] Saxo. lib. iii. Hiſt. Dan. filiorum affectus paternis ſoleant ingeniis reſpondere.
[h] 1 Chron. iii. 3. [i] 1 Kings xxii. 43. [k] 2 Kings iii. 2. and xiv. 3. and xvi. 2. and xviii. 13. 2 Chron. xxxiii. 22. and xxvii. 2. Pſ. lxxviii. 8. Lu. vi. 23. Zach. i. 2. [l] Qualem creavit moribus juſſit vocari nomine mundi ſupremus arbiter. [m] Imitans pacem et juſtitiam amabat. [n] K. Charles his book in his ſolitudes and ſufferings.

which

which will gaine peace to himſelfe heer, and everlaſting mercy heerafter. It was good advice, which Otho the emperour gave uppon his death bed to his nephew and ſucceſſor Coccius, whom he ſent for and thus admoniſhed. [o] My ſon, neither wholy forget, nor altogither remember, that Caeſar was thine uncle. Heerby (as Suetonius notes) he exhorted the young man every way, to moderate his mind; that remembring the emperour was his uncle, he ſhould imitate his virtues, and not be a reproach to his aunceſtors; butt that in the mean time, he ſhould not ſo remember him, as therby to waxe proud, or to contemne others: and this way and courſe of imitating the fathers actions by a prince, will render him the more pleaſing both to God and men.

Beſides that etimology of the name Charles, there be divers others in the german language, which are very ſignificant; as Adam ſignifies, living breath; Eve, even the ſame; Cain, is wrathfull; Abel ſignifies, a man inabled to the ſervice of God; Seth is, placed in the roome of another; Henoch is, law yet againe; with very many the like: and of the ſame ſort are many of our antient engliſh names; as Alwin ſignifies, all winning; Anſelme is, defence of authority; Bede, a devout man; Caradock, dearly beloved; Cuthbert, famous; Cadwallader is, warlike; Eadgar, bleſſed; Dunſtan, the ſame with Aaron, that is, a mountaine of ſtrengthe; with a number of the like, too many to be heer inſerted: or thoſe among the Romans and Graecians, who had many [p] names of great veneration amongſt them, and very ſignificant, as to the qualities of the perſons ſo named.

[o] O fili habuiſſe te patruum Caeſarem nec prorſus obliviſcaris, nec admodum memineris. [p] Virius, Valerius, Valens, Craterus, &c.

The Hungarians call a king by the generall name of Carl [q], ſignifying with them a king; and Carl is only in the coynes of Charles the Great. Abraham had that name given by God, in relation to the promiſed bleſſing to him and his ſeed; and accordingly it ſignifies in the hebrew [r], a high father of a multitude, a father of many nations; ſuch a father of a multitude, of many nations, hath God made our Charles: and may the bleſſing of Abraham be uppon him and his for ever.

[q] Aventinus. [r] אברהם Pater excelſus multitudinis.

CHAP.

CHAP. III

By the grace of God [a].

THESE words are familiar in the titles of the kings of England, France, Spaine, Sweden, Denmarke, and others of Europe. Chaſſanaeus and Rebuffus [b] hold, that no other ought to uſe this ſtile, butt ſuch a prince as acknowledges no ſuperiour; and it imports in it ſelfe as much as an aſſertion of being independant uppon any ſave God himſelfe: yett by uſe it hathe alſo bin communicated by princes to their ſubjects of greater note, and ſuch as are not princes; but where it hath not bin ſetled in a ſubject by ſome lawfull title, there the uſe of it is an uſurpation uppon the ſupreame dignity, on which it depends.

Of this opinion is the ſpaniſh lawyer [c], who confutes Chaſſanaeus and Rebuffus: butt the ſtile of, [d]by the grace of God, might be uſed by Johan as queen of Caſtile, as well as by her as dutcheſſe of Burgundy: as our kings of England writing themſelves, by the grace of God kings of England, France, lords of Ireland, dukes of Normandy and Aquitaine, and earls of Anjou, doth not neceſſarily importe, that they were by the grace of God dukes of Aquitaine &c. So in the title of the biſhop of Ely, William by the grace of God biſhop of Ely, chancellor of our lord the king, juſtice of all England, and legate of the apoſtolick ſee; the ſtile, by the grace of God is applyed only to his being biſhop, not to his other offices; as that of John of Gant, who wrote himſelfe, by the grace of God king of Caſtile, and duke of Aquitaine and Lan-

[a] Dei gratia.
[b] In conſuet. Burg. &c. ad conſtit. Reg. tom. ii. et benefic. ante vac. art. ii.
[c] Marcus Salon de pace, proem. Rebect. in Leg. Taurin. 36.
[d] Por la gracia de Dios.

caſter

caſter &c. by the grace of God, hath reference to his ſoveraigne title of king, not to his dutchies or earldomes.

But in elder and later times, this ſtile is frequently uſed by biſhops, and by the maſter of the temple [u]; and is common in the inſtruments of biſhops and abbots, in the lieger bookes or chartularies of monaſteries yett remaining in divers hands: and by the ſtile of the chancery, in the ſummons of our parlements and writs to aſſemble or prorogue the convocations, the king gives to the archbiſhops the attribute of, by the grace of God; and in writs of ſome other nature in the Regiſter [w], and Fitzherbert [x]. But now they uſe it not in the firſt perſon, butt, by the clemency of God [y], or by divine providence; though in elder times, by the grace of God, was uſuall in their titles; as appears by the merry ſtory of Walter Mapez [z], that Reinold being by corrupt means choſen biſhop of Bath and Welles, when the archbiſhop of Canterbury refuſed to conſecrate him he went to the pope, and by luſty bribes obtained his biſhoprick; and then (ſaith Mapez) lying to God, in the beginning of all his inſtruments where he ſhould have written, by the grace of the purſe, he ſaid, by the grace of God [a]. An old manuſcript [b] giveth divers rules for the uſe of this ſtile above 300 years ſince; which is ſett down by the ſecond (edition of) Titles of honor largely. It was uſed by the duke of Somerſet [c], in E. 6. time, in his title. Butt the antienteſt uſe of it with us was by Ina [d], a weſt ſaxon king, who in the praeamble to his lawes, writes himſelfe thus: [e] I Ine by the grace of God

[u] Epiſt. Reg. et Princ. edit. in tom. ii. Geſt. Dei per Franc. p. 1176.
[w] F. iii. a. & b. 42. b. &c. [x] Fitz. n. b. fol. 132. & 2. E. &c. [y] Dei clementia, Providentia divina. [z] De nugis curialium, MS. [a] Ubi debuiſſet ſcribi, burſae gratia, Dei gratia dixit. [b] Roſula novella MS. c. 112.
[c] Holinſhed, p. 1237. [d] Lamb. Saxon Lawes. [e] To Ine mid gode ge-
ſæt pere-peaxna Cyning.

king of the weſt Saxons &c. and ſo doe ſome of his ſucceſſors. About our H. 3. time it came into a conſtant uſe with us, and in other kingdomes; as in the ſtiles of the archdukes of Auſtria, the dukes of Saxony, Baviere, the counts palatines of the Rhine, marqueſſes of Brandenburgh, and other of the german princes, it is obvious. The landgrave of Heſſe hath it alſo frequently in his epiſtles to Tycho Brahe, as William [f] by the grace of God landgrave of Heſſe &c.

Some of the turke's baſhawe's [g] have alſo uſed this ſtile; and the dukes of Venice, who have their power from the ſtate there, yett alwayes ſtile themſelves, by the grace of God duke of the Venetians, both in their ſeales and inſcriptions. Robert Guiſcard, duke of Apulia and Calabria, afterwards king of Sicily, a feudatorie to the pope, writes it with this qualification [h]; I Robert by the grace of God and of St. Peter, duke of Apulia &c.

In ſome of the patents of Charles the great, this ſtile is inſerted; and that ſeemes to have bin the antienteſt uſe of it in the empire. The greek emperors are not obſerved to have uſed it att all, butt inſtead therof write themſelves, crowned of God [i]; implying, by the grace of God; with other the like expreſſions. About 400 years ſince [k], it came to be a fixed ſtile in moſt kingdomes of Chriſtendome: and in ſome kingdomes the uſe of it was neere as antient as chriſtianity.

Surely no prince of Europe could ever more juſtly and more ſignificantly inſert thoſe wordes, by the grace of God, in their ſtile,

[f] Von Gottes gnaden. [g] Turkiſh hiſtory. [h] Scipio Mazella nelle deſcrittione del regno de Neapoli, p. 420. [i] Θεοσεφὴς. [k] 2 Tit. hon. p. 127.

than

than our preſent king Charles the ſecond may make uſe of it; both in reſpect of his right and title to that, and to all other priviledges and rights of majeſty; and likewiſe uppon a ſerious conſideration of the ſpeciall grace and goodnes of God towards him. Whence was his preſervation abroad, in the middeſt of ſo many and great daungers? whence his reſtitution to his crown and countrey? was not all by the grace of God, and that hardly to be parallelled in ſtory? May this ſtile be ſtill more peculiar to him than to other princes! May it be written in his inſtruments and actions! May it be ever remembred by him, and watch over him!

CHAP. IV

Of England, Scotland [a].

I putt theſe two kingdomes under one head; ſo God hath happily placed them in one iſland, of one religion and language, and united under our gratious ſoveraigne by the happy acceſſion of his royall grandfather to both crownes, and his lineall diſcent and inheritance to them; and that they both may be the better conſidered in the generall name of them. Touching firſt the perticular name of England, I find ſome little variety of opinion when it was introduced: John of Saliſbury and Polychronicon [b] ſay, that the name of England was from the firſt comming of the Saxons and Angles into this iſland; and I have paſt a countrey in Germany neere Juitland, which ſome of them now call Anglelandt, and from whence they would have England to be ſo named.

Hector Boetius [c] and others will have it to be brought in by Hengeſt, when he invaded and made his conqueſt in this part of our iſland: and venerable Bede [d] mentions that countrey in Germany called England, before the Saxons came into Brittaine, the inhabitants wherof were called then Angles, and invaded Brittaine with their countrymen the Saxons: and theſe Angles [e] gave it the name of their own countrey England.

This countrey of England in Germany, is by Crantzius called Anglia [f], that is England, in plaine language. It lyes between Juitland and Holſatia: and from hence the Saxons went into Brittaine,

[a] Angliae, Scotiae. [b] 6. c. 16. [c] Scot. Hiſt. 7. et Jo. Gaver, Epig. in conf. amant. et Pardingus. [d] Hiſt. Eccleſ. Angl. [e] Cambden, Ethelwerdus. [f] Verſtegan, p. 123.

and

and called that part of it, where they ſetled, England [g]; which could not be ſo called (as one [h] fancieth) from Angul the brother of Dan, the firſt king of Denmarke, who dyed many hundred years before any part of this iſland was called England: butt poſſibly from him that old England in Germany, might take its name; or (as ſome ſuppoſe) from enghe, which in the german tongue ſignifies narrow [i], ſtraight, or a nooke; and ſuch a countrey that old England is, and therfore might be called England, as being a narrow or ſtreight land: and from thence alſo ſome ſuppoſe our countrey being narrow, to have alſo taken the name of England. Att the Saxons firſt ſetling heere, and in the time of the heptarchy, it is noted to be found in ſome antient writings, that our country was called Saxony [k] bejond ſea, and ſo ſtiled by forein writers; and new Saxony [l]: and att this day the Welch and Iriſh call us Soiſſons or Saxons. The moſt authenticke teſtimony of the change of the name to England is, that Egbert king of the weſt Saxons, whoſe glory and greatnes conſiſted in the ſwallowing up of the other ſubject kingdomes into his own rule; he conſidered, that ſo many different names, as the diſtinct kingdomes of the heptarchy before had cauſed, was no more neceſſary; and that as the people were all originally of one nation, ſo was it fitt they ſhould againe be brought under one name: and being affected with the name of Engliſhmen, by pope Gregory his alluding the name of Engiliſee unto Angel-like [m]; as in the german language, ein Engelcheman ſignifies both an angel-like man, and an engliſh, and they have no other word for both thoſe expreſſions. King Egbert in a parlement att Wincheſter, changed the name of the kingdome by the conſent of his people, and commaunded [n] it

[g] Henricus Rantzovius.
[h] Saxo Grammaticus.
[i] Cornelius Kilianus.
[k] Saxonia tranſmarina.
[l] Nova Saxonia.
[m] Ex Inſtrum. lib. Hoſpit. S. Leonardi Ebor.
[n] Alred. Rhevallenſis vit. S. Edw. juſſit illud de caetero vocari Angliam.

from

from thenceforth to be called England; which ſome compute to be the year 800 after Chriſt.

The next word in the writt is Scotland, which name is fetched very high by thoſe [o] who bring it from Scota, the daughter of Pharaoh king of Aegipt; who in the time of Moſes was marryed to Gathelus, a noble Graecian, the ſon of Cecrops who built Athens. This Scota had many children by Gathelus: and in honor of her name, ſuch as came of the poſterity of that nation were afterwards, and are att this day called Scoti, Scottiſhmen; and the land where they inhabite, Scotia, Scotland. That this Gathelus being warned by the oracle, and ſeeing the beginning of the ſore plagues in Aegipt, for the cruelty uſed towards the Iſralites; Gathelus with his wife and children and people, putte to ſea, to ſeeke for another habitation; and firſt planted in Spayne, where increaſing, two of his ſons landed in Ireland; and from thence ſome of them tranſplanted themſelves into the northerne part of this iſland, to which they gave the name of Scotland, themſelves being called Scottiſhmen, as before is fancyed: and they made alliances with the Picts, a people who came from the northerne countryes, ſo called from painting themſelves. And theſe alſo ſetled in that part of this iſland, which is called Scotland.

That the Gothes, Danes, and thoſe northerne people came into Scotland, with their king Fergus the ſecond, in the year of Chriſt 403, is agreed by their hiſtorians [p]: and thoſe nations were of old time called Schithi, and Sciti, and Sueui, and Scythians; as well as Swedes. The Graecians called all the northerne people Scythians, perhappes (ſaye the illuſtrations on Polyolbion [q]) from ſhooting: and

[o] Hector Boetius. Holinſhed. Hiſt. of Scotland, p. 29. [p] Chron. Scot.
[q] J. Seld. p. 122.

by

by tradition from the Scythians, themſelves they had very antiently a generall name titling them Scutten, which is ſoone contracted into Scots. Doubtles the name of Scottiſhmen, and of Scotland, is of as great antiquity as any part of their ſtoryes.

Geffrey of Monmouth [r] relates of the three ſons of Brute, Locrinus the eldeſt, who gave to the ſouth part of the iſland, now called England, the name of Loegria; Camber his ſecond ſon, who had for his part Wales, and gave it the name of Cambria; and Albanactus the third ſon, who had for his ſhare the north part of the iſland, and called it after his name Albania; which ſeverall names were all drowned in that one name of Brittaine, given to the whole iſland, whether from Brute the trojan or not, is not very neceſſary to diſpute. And although [s] Cambden, and Verſtegan, and others take great pains to confute the ſtory of Brute as fabulous; yett I find a better authority [t] for confirmation of much of that ſtory, which is in thoſe notable letters written by our king Edward the firſt, in the 29th year of his reign, with the advice and aſſent of his parlement, unto the pope, touching the ſuperiority of the crown of England over Scotland. In which letter is recited, [u] that in the time of Eli and Samuel the prophet, a certain valiant and eminent man named Brutus, of the race of the Trojans, after the diſtruction of that citty of Troy, with many noble Trojans, landed in a certaine iſland, then called Albion, and inhabited by gyants, who being vanquiſhed by his power and ſlain, he called [w] it after his own name, Brittaine, and his companions, Brittons.

Heere we find the name of Brittain from Brutus, by the teſtimony of this letter; and the name of Albion before that, given to

[r] f. 10. 11. [s] Brittania, p. 92. [t] Tho. Walſingham. Hiſt. Angl. p. 81. [u] Temporibus Heli et Samuelis prophetae, vir quidam ſtrenuus et inſignis, Brutus nomine, de genere Trojanorum &c. [w] Eam de nomine ſuo Brittaniam, ſociosq; Brittones appellavit.

this

this iſland. Some remember alſo the name of Samothea before that: and although they deny Brute to have bin a trojan prince, yett they allow a prince of that name to have come out of Gaule hither [x], before (as they ſay) this was an iſland; and to have called it after his name, Brittaine.

My lord Coke [y] fetcheth the derivation of Brittain from the greeke, and ſhoweth the intercourſe in thoſe dayes between the Graecians and us; for which he citeth Caeſar [z] in his Commentaries; that the Druides, the great judges heer and in Gaule [a], did uſe greeke letters, and that from Brittaine the diſcipline of the Druides was carryed over into Gaule: for which Pliny [b] alſo is cited, and the name of Druides fetched from the greek word [c] which ſignifies an oak, becauſe they frequented woods where oaks were, and in their ſacrifices uſed the leaves of thoſe trees. He mentions alſo the traffique [d] between the Maſſilienſes a colony of the Graecians, and the Brittains: of which [e] Strabo affirmeth, that they uſed to fetch tinne from the brittiſh iſlands to Maſſalia; and that the Brittains ſacrificed to Ceres and Proſerpine, according to the greeke forme of ſuperſtition, as they did in Samos [f].

Uppon theſe and many other the like grounds he derives the name of Brittain from the greek. Brit (ſaith he) in the old brittiſh language ſignifies painted; and ſo in greeke the like word [g] for a picture; and tania [h] in the greeke ſignifies land: ſo Brittaine is as much as the painted land. And in conformity to this, Juvenall calls

[x] Verſtegan, c. 4. p. 90. [y] Epiſt. to the 3. Rep. [z] L. vi. de bel. Gallic. [a] Graecis utuntur litteris. [b] L. xvi. c. 44. [c] δρύς.
[d] ἐκ τῶν Βρεταννικῶν νησῶν εἰς τὴν Μασσαλίαν κομίζεσθαι. [e] Strabo. l. iii.
[f] ἐν τῇ Σαμοθράκῃ. The paſſage is in the 4th book, and does not quite come up to this aſſertion; the words being Ἀρτεμίδωρος——φησὶν εἶναι νῆσον πρὸς τῇ Βρετταννικῇ; καθὴν ὁμοίαν τοῖς ἐν Σαμοθράκῃ, περὶ τὴν Δημήτραν καὶ τὴν Κόρην ἱεροποιεῖται. (M)
[g] τὸ βρέτας. [h] τανία

our

our iſlanders, [i] painted Brittains; and [k] Caeſar ſaith, that they painted themſelves to make them ſeem fearfull in fight to their enemies.

Sr. Tho. Eliot would have it to be Pritania. Humphry Lluyd calles it Pridcain, bicauſe that word in britiſh ſignifyeth beauty or whitenes; as before it was called Albion, as ſome would have it [l] from the white rockes or cliffes on the ſea ſide. Others will have it Olbion from the greeke, ſignifying an happy iſland; as (bleſſed be God) now it is, being in peace, and under the flouriſhing empire of our gratious monarch. And two ſuch kingdomes as England and Scotland are, ſo great, ſo noble; and ſo happy an iſland as Britain is, ſo bleſſedly united, may deſerve in the honor of it, a diſquiſition into it's name and appellation.

[i] Pictos Britannos. [k] Commentar. l. v. [l] Ab albis rupibus.

CHAP. V

France and Ireland.

TO beginne with France, as next in our king's title. I purpoſe not to inquire into the old conqueſts in the times of Lucius, Belinus, and other of our elder kings: butt ſince the acceſſion of the dutchy of Normandy by William the firſt, to the crown of England, the territoryes of the kings of England in France increaſed very much; ſo that our King Henry the ſecond became very great in his dominion, having all the land and ſea under his ſubjection from the Orcades, to the Pyrenaean mountains which part France and Spaine. England and Scotland he had, by that which is called the Norman conqueſt: theſe and Normandie were laid togither by H. 1.; Anjou, Touraigne, and Maine were the inheritance of his father, the firſt Plantagenet; Poictiers and Aquitaine he had by his wife; and Brittaine he held as his dukedome of Brittaine. It is true, that by the forfeiture of king John for the murther of prince Arthur, a great part of all this was ſeiſed by the king of France; and moſt of it loſt afterwards. Butt a new title to France is ſett up by our king E. 3. [a]by the perſwaſion of Robert of Artois, diſcontented with the french king for judging againſt him, and for his aunt, the earldome of Artois: and being ſought for to be apprehended by the king of France, he fled into England to E. 3. and putt him in mind of his right and title to the crown of France; which was as ſon and heir to the ſiſter of Charles king of Fraunce, who dying without iſſue, the right and title of the crown of Fraunce deſcended uppon E. 3. his ſiſter's ſon. Againſt which, the party of Philip of Valois

[a] Baker Hiſt. of England, p. 170. Daniel Hiſt. of Eng. p. 225. Tho. Walſingham, p. 143.

then gott into poſſeſſion of the crown, had nothing to object butt the pretence of their ſalique law, which barres (ſay they) the female line from the inheritance: and by this they would barre E. 3. from his right to France; though in other caſes, that ſalique law was not held in force among them.

King E. 3. prepares for the gaining of his inheritance in France: publiſheth his title to the pope and neighbour princes: enters into a league with divers of them; perticularly with Flanders, where by perſwaſion of the Flemings he tooke uppon him the ſtile, title, and armes of France; wherby they held they might the better juſtify their pertaking in his quarrell, and diſpence with their oath formerly made to the french king; having beſides bound themſelves in 20 hundred thouſand markes, never to beare armes againſt the king of France. And theruppon this league was eſtabliſhed between them, and king Edward. And this taking of the armes and title of king of France, is mentioned in our [b] Parlement rolles of that time.

The gallant exploits performed by this king, and by his ſon the black prince, perticularly in the famous battles of Poictiers and Creſſy, in purſuance of this title to France, are extant in all our ſtories. So are the memorable actions of our king Henry the fift, and the famous battle of Agincourt: after which it was agreed, that after the death of the then king of France, H. 5. and his heirs ſhould ſucceed in that crown; and he be regent during the life of the king of France. Accordingly his ſon H. 6. was crowned in Paris king of France: and poſſeſſion of his right was nobly maintained there, as long as his renowned uncle the duke of Bedford lived;

[b] Rot. Parl. 14 E. 3. n. 10.

but after his death, and in the reigns of the ſucceeding kings, all was loſt again in France; and laſtly Callis j. ſelfe in queen Maries time, and nothing of that continent left to our engliſh kings. Yett a few iſlands ſometimes part of Normandy, Jerſey, Guernſey, Sarke &c. ſtill continue their obedience to the crown of England, which alſo ſtill retaines the juſt right and title to that of France; and gives the armes quartered with thoſe of England and Ireland; and writes the ſtile of king of France to this day.

The next word in the king's ſtile is Ireland, a conſiderable kingdome, and a large and fruitfull iſland, antiently belonging to the crown of England, ſince the time of our king H. the ſecond. It is reckoned the third iſland in the world for greatnes: the firſt is accounted the indian Taprobane, next after it, Brittaine, and in the third place (ſaith Ptolomy) another britiſh iſland, called Hibernia, that is, Ireland; and he calleth it, Little Brittain.

The antient names of it are divers: by ſome authors [c] of elder date it is called Ierna, by others Juverna, by others Iris, and Joyernia, Oyernia, and Bernia. The natives called it Erin, the Britains named it Yuerdhon, and the Engliſh Ireland: moſt of them neere the term that the inhabitants give it, Erin, which Cambden derives from the iriſh word Hiere [d], ſignifying with them the weſt; and ſo this the weſterne countrey. Which is the more probable, bicauſe it lyeth furtheſt weſtward of any region in Europe; and the river running in the moſt remote weſt part of the iſland, is by Ptolomy called Iernus; and the moſt weſterne promontory of Spaine is by Strabo called, Ierne. Feſtus Avienus calleth it the Holy iſland [e].

[c] Orpheus, Ariſtotle, Claudian, Juvenal, Mela, Diodor. Sicul. Martian. Euſtathius. [d] Hibernia, p. 61. [e] Sacram inſulam.

I omit

I omit the fancyes of Hibernia to be ſo called from the winter ſeaſon [f]; and of Pomponius Mela [g] that would have it Jurin, that is, the Jewes land, who planted themſelves heere; and of the name Ogygia, from ancient: nor ſhall I inſiſt uppon the before recited ſtory of Gathelus, from whoſe wife Scota, the daughter of king Pharaoh of Aegipt, thoſe that were diſcended were called Scotts men; and two of her ſons with their people, comming from Spaine, landed in Ireland; and from one of them named Hiberus, that iſland was called Hibernia: and from them alſo ſome [g] authors named it Scotland, as thoſe people were called Scotts men, and gave that name of Scotland and Scotſmen to the north part of this iſland of Brittain, which they invaded from Ireland. Butt I ſhall come to neerer times, and begin with the acceſſion of that iſland to the crown of England, in the time of our king Henry the ſecond. When this iſland being full of petty kings and tyrants, was in ſuch a divided eſtate, that eaſy occaſion might be taken by their neighbours to invade them. Our King H. 2. affecting the crown of it, ſent ambaſſadors to pope Adrian 4. [h] an engliſhman borne; to have leave to invade Ireland with hoſtility, to ſubdue the land, and [i] to reduce thoſe beſtiall men to the faith and way of trueth, and to extirpate there the plants of vice. John of Saliſbury biſhop of Chartres, chiefe of the ambaſſy and in great favour with the pope, procured a bull from him, reciting, that all the iſles belonged to the church of Rome: whereas the donation of Conſtantine (from whence his holynes claimes) gives only the iſles of Italy to that ſee. By this bull the pope graunts to H. 2. that the people of Ireland ſhould receive him, and reverence him as their lord: ſaving the right of the church, and Peter pence, &c.

[f] Hiberno tempore.
[g] Rather Poſtellus. v. Cambden's Hibernia, from whence this appears to be taken. (M)
[g] Iſidore. Bede. Scotia.
[h] Math. Paris. Hiſtor. Angl. fl. 2.
[i] Homines illos beſtiales ad fidem, &c.

John

John of Saliſbury writes [k], that att his petition, the pope graunted Ireland to the king, to poſſeſs by hereditary right; and ſent by him to the king, a gold ring ſett with a pretious ſtone, for inveſtiture of Ireland: butt nothing was executed. Some years after, the king of Leinſter requeſted ſuccours from England, againſt his enemyes: and Richard Strongbow earle of Pembroke went over with forces to his aſſiſtance, and prevailed ſo much, that he grew ſuſpected by the king: butt he acknowledged all that he had gotten to be for the king. And about 17 years after the bull, the king himſelfe went over into Ireland with an army, ſubdued a good part of it, and had homage of thoſe petty princes, who after that, as before, did retaine the name of kings. Yett ſaith a [l] record of Ireland, they were not ordeined with the ſolemnity of any order, [m] nor with the ſacrament of unction, nor by right of inheritance, or any ſucceſſion of property; butt by force and armes every one obteined his kingdome. King Henry following the ſyllables of the bull, titled himſelfe, lord of Ireland; ſo did his ſucceſſors; and to E. 2. or 3 [n]. the bull was renewed by pope John: and this title they putt in their ſtile before duke of Guienne. And in confirmation of king John's title, pope Urban 3. ſent him a crown of peacockes feathers. And this title of lords of Ireland our kings uſed; though Choppinus affirmes, that the pope graunted to H. 2. the principality of Ireland [o]. King John eſtabliſhed there engliſh lawes and officers, fully related by Mathew Paris. And though our kings did write themſelves butt lords of Ireland, and called it the land, not the kingdome of Ireland; yett their dominion was meerly royall: and they had their juſtices, lieutenants or deputies, which were as viceroys,

[k] Metalog. iv. c. 42. [l] Black booke of Chriſt church in Dublin.

[m] Nec unctionis ſacramento, nec jure haereditario, vi et armis quilibet regnum ſuum obtinuit. [n] Conſtit. pontiff. memorat. a Choppino, de domanio Franciae, l. ii. tit. 1. ff. 11. [o] Hiberniae principatus titulum.

and

and power given them, with very rights of majeſty. And R. 2. being himſelfe butt lord of Ireland, created Robert Vere duke of Ireland, with the fulleſt prerogatives of majeſty; and that with aſſent of parlement, and by liege homage only: with the patronage of all biſhopricks, abbyes, and the like; and power to make a chancellor, treaſurer, juſtices of both benches, barons of the exchequer, ſheriffs, coroners, and all other ſuch officers; right of coyning money, and the like royalties mentioned in the [p] patent which is extant on the record, and in the [q] Titles of honor att large tranſcribed.

In the latter end of king H. 8. the title of lord of Ireland was altered into king, by an act of that [r] parlement; reciting, "that the kings of England have bin lords of Ireland, having all manner of kingly juriſdiction, and authority royall belonging unto the royall eſtate of high majeſty of a king; and by the name of lord only of Ireland, where they were, and of right ought to be kings of Ireland, and ſo reputed and called: and that for want of that name and title of king, divers attempts of diſobedience had bin in the Iriſhry." This ſtatute therefore enacts, that "the king, his heirs and ſucceſſors have the name, ſtile, title and honor of king of this land of Ireland; with all prerogatives, &c. to the majeſty and ſtate of a king imperiall belonging; and be from henceforth named, called, accepted, reputed, and taken, to be kings of this land of Ireland: to hold and injoy the ſaid ſtile, title, majeſty, and honours of kings of Ireland; with all praerogatives &c. to the king's highnes, his heirs and ſucceſſors for ever; as united to the imperiall crown of this

[p] Rot. cart. 9. R. 2. m. 1. and Rot. parl. 9, and 10. m. 3. [q] Seld. 2 Tit. hon. p. 39. [r] Statut. Hibern. 33 H. 8. c. 1.

realme of England." And this was alſo confirmed by [s] pope Paull 4. to king Philip and queen Mary.

Thus the title of our kings became, as it is in this writ, king of England, Scotland, France, and Ireland. The which title king James, uppon his acceſſion to the crown of England, would have altered unto "King of Great Britain, France, and Ireland;" butt our Parlement would by no means aſſent unto it: the reaſons whereof are expreſt in a little manuſcript treatiſe, which I have ſeen of that matter.

I have alſo ſeen a charter of king Edgar under the authentick ſeale, where he uſeth this title: "[t] By the large clemency of the high thundering God, who is king of kings and lord of lords, I Edgar king of the Engliſh, and of all things of the iſlands of the ocean, which incompaſſe Britain, and of all nations which are included in them, emperor and lord." And then he ſigns with this ſtile: "I Edgar king of the Engliſh, emperor of the kings of the nations, have confirmed &c." Tho. Walſingham [u] reports this king Edgar to have four kingdomes; and ſtiles him king of England, Scotland, Denmarke, and Norway: and his owne charter teſtifies his ſubduing of Ireland beſides. Butt I ſhall ſpend no more time uppon theſe titles; only wiſh the continuance, and increaſe of honor and proſperity, to the preſent.

[s] Anton. Gabutius, de vita et rebus Pii. V. l. 1. [t] Altitonantis Dei largiflua clementia, &c. Ego Edgarus Anglorum baſileus, &c: N. B. There is preſerved in the britiſh Muſeum, MS. Harley 7513, a charter which agrees with this quotation of our author, as far as is here recited. The charter is in the hand of the times, ſigned with the names of the king, and others preſent, in the ſame hand: with croſſes prefixed to each name, ſeemingly by different hands, and giving it much the air of an original; notwithſtanding what the learned Dr. Hickes is pleaſed to ſay concerning it, in page 86 of the "Diſſertatio Epiſtolaris," who may be conſulted. The "authentick ſeale" to the copy Sir Bulſtrode ſaw, (if there be no miſtake,) leads to further conſiderations. (M) [u] P. 55. Hiſt. Angl. E. 1.

CHAP.

CHAP. VI

King.

THE king of England is the head of the people, and of their repreſentatives in parlement; the ſoveraigne lord and ſupreame governour of his people according to lawe: of moſt antient inſtitution, conſtant continuance, and greateſt benefit for the peaceable and happy governement of thoſe, over whom God hath ſett him.

Butt this will not be admitted by ſome diſſenting ſpirits, ſuch as thoſe whom Clapmarius [a] obſerves, are never contented with the preſent ſtate; butt are ever projecting changes in their own fancyes, and can hardly ſay what they would have.

Some of theſe have objected againſt kingly government, that it is unlawfull, againſt the good of the people; nay, againſt the mind and word of God, and ought not to be received by God's people. Uppon this occaſion, and att this time, it may not be amiſſe to examine their perticular objections, and to indeavour ſome anſwear to them.

1. They alleadge in matter of example, the evills and miſchiefes that have befallen to people under kingly governement: therefore the ſame ought not to be admitted. To which is anſweared, that the matter of fact cannot be denyed, butt that the oppreſſions and miſchiefs under evill kings, have bin very great and ſharpe; and it would be a great volume that ſhould conteine butt a ſmalle part of them. Butt the concluſion upon this fact, muſt be denyed; or elſe the argument will be too farre extended. There have bin evill kings, therfore there ought

[a] F. 71. Non praeſenti ſtatu contenti.

not to be any king. By the ſame argument it followes, there have bin evill judges, therfore there ought to be noe judges; there have been evill miniſters, therſore there ought to be no miniſters; nay there have bin evill men, therfore there ought to be no men.

The ſame deduction may be made from thoſe things which are good, as well as from the bad. And uppon peruſall of ſtories, as there are found examples of evill kings, and evill times under them: ſo are there likewiſe of good kings, and good times under them, wherin much quiet, peace, and ſafety, liberty and property have bin injoyed; and which is above all, that the goſpell of Chriſt hath bin received, and the freedome and happineſs of goſpell rights, injoyed under them, and procured chiefly by them. To omit the ſtories of forein nations, out of which plenty of matter (though more might be deſired) uppon this ſubject may be gathered; in our own annales we find many good and pious kings, ſurmounting the number of the evill ones. To keepe myſelfe to the laſt ſorte, we may remember Lucius the britiſh king, who firſt received the faith of Chriſt in this iſland: and many of the ſaxon kings who imbraced the goſpell, and lived anſwearable therunto; and ſome alſo after the norman invaſion.

To come neereſt to our own time, ſince the reformation begunne by king E. 6. I thinke none will deny, butt that of ſixe kings and queenes, five of them have continued the comforts and priviledges of God's people, and may juſtly be reckoned in the number of good princes. And it were to be wiſhed, that one halfe were good, among any ſort of men whatſoever. For the great warres under our kings, eſpecially the civill warres, they cannot be imputed to the name or office of king, as the occaſion of them: butt to injuſtice or oppreſſion in ſome; or rather to the iniquities and corruptions of ſinfull

full men, whom God puniſhed by the ſword for their tranſgreſſions. And it were to be wiſhed, that our age were not too much infected with the like.

The civill warres between the houſes of Yorke and Lancaſter, were occaſioned by the greatnes of the power and perſons of thoſe familyes. Not bicauſe of kings; butt whither an Edward, or a Henry ſhould gett into the throne. And the bloud of the bleſſed martyrs was drawn by the mercileſſe prelates, and others of thoſe times, more than by the king's commaunds.

That good kings cauſe good times, is evident by the ſtories of all nations. Among the Hebrewes, David hath a perticular teſtimony of it. He is ſtiled [b] a man after God's own heart; and it is ſaid of him, that he perceived the Lord had eſtabliſhed him king over Iſrael; and that he had exalted his kingdome, for his people Iſrael's ſake. The hebrew word [c] doth import knowledge, more than a perceiving; a certaine viſiblenes of a thing: and the word [d] which we reade eſtabliſhed, comes from the worde [e] that ſignifies to builde. So that it ſeemes to be the building and workmanſhip of God, to make a good king: and that David was ſo built, and made by God a king; and that out of love to his own people, for his people Iſrael's ſake.

2. Some have objected, that by kingly governement, the liberty and property of the people is diſtroyed, and ſubmitted to the will and pleaſure of the king: and therfore kingly governement is not to be received. To this, ſomewhat hath bin ſaid to the laſt objection, by way of anſwear. And it is true, that of all worldly things, liberty and property are the moſt pretious, and moſt carefully to be preſerved.

[b] 2 Sam. v. 12. [c] ידע [d] הכינו [e] כון

And it cannot be denyed, butt that where kingly governement is ſuch as the Iſraelites deſired, like the nations about them, that was arbitrary and tyrannicall; there the liberties, and properties, and lives of all that are under ſuch a king, are ſubject to his will, bicauſe his governement is arbitrary; and no man hath any aſſurance, either of life or eſtate, under ſuch a power. Butt where a kingly governement is limited by good lawes, and rules, as that in Deuteronomy[e] is praeſcribed to be; under that kingly governement, the liberty, property, and lives of the people are in as much ſafety, certainty, and ſecurity, as they can be under any other forme of governement whatſoever. So that it is not kingly power in itſelfe, butt the good or bad inſtitution and management therof, the arbitrarines, or the fixednes of it by lawe, which raiſeth this objection and anſwears it.

3. Another objection hath bin made, that God himſelfe inſtituted another governement over his own people, and not that of kings; as that of Moſes, Joſhua, and the judges, who were not kings butt leaders of the people, and judges of their controverſies: and therfore the governement of kings, being different from that which was inſtituted by God, is not to be admitted. To this may be anſweared, that the governement inſtituted by God over his people, was monarchicall and kingly, and the aſſertion of the contrary is miſtaken; that the holy patriarches did exerciſe kingly power in their families; that [f]Noah is reckoned a king before and after the floud, who was ſucceeded by his ſon Sem: and this title of king in Sem, is noted to be in expreſſe words in the holy ſtory; according to the moſt received tradition, and conſent of many authors, that Sem and Melchiſedeck were the ſame perſon; for he is named [g] king of Salem. Abraham is ſtiled by the Hethites, a [h] mighty prince: and that he was

[e] Deut. xvii.
[f] Cedren. Beroſus. Seld. Tit. honor. pt. i. p. 7.
[g] Gen. xiv. 18.
[h] Gen. xxiii. 6.

ſo,

ſo, appears in his warre againſt king [i] Cedorlaomer. Touching Moſes, it is a great miſtake in thoſe who affirme, that he was no king: the expreſſe words of the text [k] give him plainly that name and title of king. Moſes commaunded us a law; and he was king in Jeſhurun. &c.

What is there meant by Jeſhurun, is to be inquired. The hebrew [l] hath it, king in Jeſhurun; the chaldee, ſyriack, and perſick verſions for Jeſhurun, do render Iſrael; the Spaniards doe the like, [m] he was king in Iſrael; the Germans agree heerwith; and Jeſhurun is underſtood and rendered ſo, a little before in the ſong of Moſes [n]. Butt Jeſhurun waxed fatt, and kicked &c. which the Mauritanians made, [o] the nation of the Jewes waxed fatt. The rabbins agree heerwith. And uppon that place of Iſaiah [p], which is an expoſition of itſelfe in theſe words, Feare not, O Jacob my ſervant, and thou Jeſhurun whome I have choſen; the greeke verſion hath a note, viz. for Jeſhurun underſtand Iſrael. The Septuagint read it [q], and he ſhall be prince in the beloved. Uppon this Tertullian [r] ſaith, a king ſhall ariſe out of the houſe of Jacob, in the congregation of the people. The arabick in the former place of Deuteronomy, hath [beloved] and in that of Iſaiah [the righteous]. The ſamaritan verſion ſaith, [s] king among the righteous. The moderne chriſtians retaine the word Jeſhurun; as Tremelius, the engliſh tranſlation under king James, the belgick and the italian. The old engliſh tranſlation under H. 8. hath in the firſt place [upright] in the latter [and he was

[i] Gen. xiv. 1. [k] Deut. xxxiii. [l] ויהי בישרון מלך [m] Y fue en Yſrael rey. [n] Deut. xxxii. 15. [o] Impinguata eſt gens judaica. [p] Iſa. xliv. 2. [q] Καὶ ἔσται ἐν τῷ ἀγαπημένῳ ἄρχων. N. B. τὸ ἄρχων deeſſe in codice alexandrino: et quum locus citatus ſit ἐυλογία ἣν ηὐλόγησε Μωυσῆς τοῖς υἱοῖς Ἰσραὴλ, fatendum eſt, (quod cum pace aliorum dixerim) ſenſum integrum ſic ſe habere. "Jehovah erit in Jeſhurun, congregatis principibus populorum, ſimul cum tribubus Iſrael. (M) [r] De jejun. adverſus Psychichos c. vi. Surrexit rex è domo Jacob. [s] In rectitudine rex.

in

in Iſrael king; likewiſe the tranſlation under the biſhops. The french in the former place of Deuteronomy, doe reade, [t] the righteous; and in the latter place they reade it, and [u] he was king among the righteous. Luther reades it, [w] and he bare the office as king, or of king. The belgick reades it, [x] and he was king in Jeſhurun. Both chriſtians and Jewes, and generally, the tranſlators and expoſitors of the text doe all agree uppon it, as a cleer and undeniable trueth, without any diſpute or difference of opinion, that by the word Jeſhurun, the people of Iſrael are ſignified; and where it is ſaid, king in Jeſhurun, it is the ſame as if it had bin ſaid, king in Iſrael. Neither are authorities wanting out of the hebrew authors, [y] that Moſes was king. They have theſe expreſſions, and Moſes our maſter was king, and Moſes was king, and the like. [z] Another calls him a prince of princes, and a king over Iſrael. The like is alſo to be found with the chriſtian writers. Hugh Grotius ſpeaking of Moſes ſaith, [a] that in kingly right he governed the people. Nazianzen ſaith, [b] Moſes exerciſed the office of legiſlator, of judge, and of king. And of thoſe two qualities of chiefe prieſt, and lawgiving Philo ſaith, [c] that they are moſt agreeable to kingly power. Our learned [d] countryman declares his opinion to be, that Moſes was in trueth king, or prince of the Iſraelites, according to the then divine inſtitution. It ſeemes then, that he was king by divine inſtitution; and if ſo, it anſwears this objection. When God directed Moſes to make uſe of Aaron to ſpeake for him, the text ſaith, [e] he ſhall be to thee inſtead of a mouth, and thou ſhalt be to him inſtead

[t] Le droiturier. [u] Et a eſté roy entre les droits. [w] Under verwaltet das ampt eines koniges. [x] Ende hy was koninck in Jeſchuron. [y] Levi Gerſon. in Piruſh. hottora. f. 245. col. 3. Aben-Ezra. Maimon. tract. Beth Habenhira, c. vi. ſ. 1. [z] Philo de vita Moſis, l. ii. c. 3. [a] Jure regio populum gubernavit. [b] Orat. vi. [c] ὡς αρμοτλέσεις μάλιςα βασιλείᾳ. [d] Seld. de Synedr. l. ii. p. 62. Regem fuiſſe Moſem reverà, ſeu principem Iſraelitarum. [e] Exod. iv. 16.

of

of God; which is interpreted, thou ſhalt be to him a [c] prince or king. The hebrew word uſed in the text of Deuteronomy, is the only word in that language, which doth ſignify a [f] king; and is ſo tranſlated in all other languages. The latine renders it rex, from whence the italian, re; the french, roy; the ſpaniſh, rey; the old brittiſh, rhi: the high dutch tranſlate it, ein koing; the low dutch, en koningh; the Swedes and Danes, kong, and our engliſh, king. And univerſally, all languages give unto that word in their tranſlations of it, the expreſſion which with them doth ſignify king.

Butt I may be cenſured to have inſiſted too long uppon this particular: I ſhall therfore contract myſelfe. Joſhuah who ſucceeded Moſes, had the ſame power. God promiſed him, [g] as I was with Moſes, ſo I will be with thee; and the people promiſe like obedience to him, as they did to Moſes. [h] According as we hearkened unto Moſes in all things, ſo will wee hearken unto thee: whoſoever he be that doth rebell againſt thy commaundement, and will not hearken unto thy words, in all that thou commandeſt him, he ſhall be putt to death; which was doubtles a kingly power over them. The judges likewiſe did exerciſe monarchicall and kingly power over the people. David was a king highly approved by God. So was his ſon Solomon; Aſa, Jehoſaphat, Amaziah, Azariah, Jotham, Hezekiah, and Joſiah. God was pleaſed with them: and the number of the good kings and approved by God, is not inferiour to thoſe who did evill in the ſight of the Lord. And ſurely God would not have given rules concerning the power of kings [i], had the governement by them bin contrary to his own inſtitution.

[c] Aaroni princeps. [f] מלך [g] Joſ. i. 5. [h] Joſ. i. 17, 18.
[i] Deut. xvii.

4. Another

4. Another objection hath bin alſo made, againſt the governement by kings, bicauſe the Lord is king over his people; and thoſe who deſire another king to reign over them, doe reject God, and doe that which is diſpleaſing unto the Lord their king. To this may be anſweared, that by the ſame argument, bicauſe the Lord is king over his people, therfore they muſt have no other king; it followes likewiſe, that bicauſe the Lord is judge of his people, therfore they muſt have no other judge; or bicauſe the Lord is lawgiver to his people, therfore they muſt have no other lawgiver. It is expreſſed by the prophet [k]: for the Lord is our judge, the Lord is our lawgiver, the Lord is our king, he will ſave us. As the Lord was their king, ſo he was their lawgiver, and their judge, as appear by this text; and if they were prohibited from having a king, bicauſe the Lord was their king, by the ſame argument they were prohibited from having a judge, or a lawgiver, bicauſe the Lord was their judge and their lawgiver. Butt the meaning of the text [l], that the Lord was their king, is, that he had appointed Samuel to rule over them: a man full of integrity and piety, approved and appointed by God who is king of kings, and therfore admits of kings under him. And whatſoever people having a Samuel to reigne over them, ſhall deſire to depoſe him, and to have a king like the nations, an Agag to reigne over them; they may well be taxed to reject God, in ſuch a choice of ſuch a king. Butt this leads me to the laſt objection, which may ſeem the moſt weighty that I ſhall heere mention.

5. Some have objected (and that with much impetuouſnes) that the governement by kings is unlawfull; from that paſſage in Samuel [m], where the children of Iſrael deſired of him to give them a king, like

[k] Iſa. xxxiii. 22. כי יהוה שפטנו יהוה מחקקנו יהוה מלכנו הוא יושיענו

[l] 1 Sam. viii. [m] 1 Sam. viii. 5.

all

all the nations; and it is said [n], the thing displeased Samuel, and God said to him, they have not rejected thee, butt they have rejected me, that I should not reign over them. Then he tells the people [o], from God, the manner of the king that should reign, and how he should tyrannise over them; and concludes, [p] ye shall cry out in that day, bicause of your king which ye shall have chosen you; and the Lord will not hear you in that day. Nevertheles the people persisting in their desire to have a king, that they might be like all the nations, Samuel againe assembles them, and tells them [q]. You have this day cast away your God, who himselfe saved you out of all your adversities, and your tribulations; and ye have said unto him, nay, butt sett a king over us. And thus was their king instituted, as the prophet notes [r]: I gave thee a king in mine anger. And when by desiring a king, a people shall be said to reject God from reigning over them; and God is said to give a king to a people in his anger, as heere was done: they conclude from hence, that the governement by kings is contrary to the mind and word of God, and an effect of his anger; and therfore not to be admitted.

In answear to this objection, I shall first consider the perticular passages uppon which the same is grounded; and then how they are applicable to our question; and lastly shew, that the governement by kings is according to the mind and word of God, appearing in diverse promises and precepts in the holy scripture, relating to kings and their governement. The elders of Israel say to Samuel, [s] thou art old, and thy sons walke not in thy wayes; now therfore make us a king. Becausе Samuel was old, and of great experience in the affayres of Israel, was he therfore unfitt for governement? or bi-

[n] 1 Sam. viii. 6. [o] Ver. 11, 12, 13, 14, 15, 16, 17. [p] Ver. 18.
[q] 1 Sam. x. 19. [r] Hos. xiii. 11. [s] 1 Sam. viii. 4, 5.

cauſe the ſons were corrupt, was the father therfore to be depoſed? Eſpecially ſuch a governor as Samuel was, appointed and inabled by God for that ſervice; and who challenged all the people, [s] if they could, to wittnes againſt him before the Lord, whoſe oxe have I taken; or whom have I defrauded, or oppreſſed; or of whoſe hand have I received a bribe, and I will reſtore it; yett this able, upright governor muſt be laid aſide, for a king like the nations. And bicauſe God was diſpleaſed with this action of theirs, doth it therfore follow, thatt all governement by kings is likewiſe diſpleaſing to him?

Schiccardus [t] citeth ſome rabbins, with whom later authors doe agree, that the people of Iſrael did not ſin againſt God in deſiring of a king; butt in deſiring of a king in the life-time of Samuel, whom God had ſett over them. And the rabbins theruppon make this expoſtulation. If (ſay they) the people had come to Samuel, and had ſaid to him, thou art grown old, and thy ſons walk not in thy wayes, butt are evill men: we deſire that thou maiſt governe us during thy life; butt after thy death, we would have a king to reign over us as God hath directed in his word, and in ſuch a manner as therin is praeſcribed: they had not then diſpleaſed God. Butt they deſired a king after the manner of the nations, whoſe kings were arbitrary, and tyrannous, and idolatrous: and heerin (ſay they) the Iſraelites offended God.

The pſalmiſt obſerves. [w] The kings of the earth ſett themſelves, and the rulers take counſel againſt the Lord, and againſt his annointed; ſaying, lett us break their bonds in ſunder, &c. The word in the originall for bonds, ſignifies impoſing of lawes according to

[s] 1 Sam. xii. 3. [t] Jus reg. Hebraeor. cap. elect. R. Kimchi, R. Maimon. &c. [w] Pſ. ii. 3.

the

the will of the heathen kings, as they did among their people. And ſtories manifeſt, that they were ſuch kings; and ſuch a king the Iſraelites deſired. But it doth not theruppon follow, that therfore all governement by kings is diſpleaſing to God: no more than that all manner of pitty and mercy is condemned, bicauſe God was diſpleaſed with Saul [x] for ſparing Agag, and the beſt of the cattle of the Amalekites, when God had commanded him to ſmite them.

The ſum of the argument for this objection is, that the Iſraelites deſired to depoſe good Samuel, and in his roome to have tyrannous and idolatrous kings; wherwith God was diſpleaſed: therfore with kings according to goode lawes, and with powers ſo limited as is beſt both for king and people, God is diſpleaſed likewiſe. Bicauſe for the ſin of the Iſraelites, God gave them ſuch kings in his anger: therfore good kings are given to all people in Gods anger alſo. Which argument will not ſway much, in the judgment of indifferent perſons.

That the governement by kings is not contrary to the mind and word of God, appears by the many promiſes in ſcripture, relating to them.

When God made his covenant with Abraham [y], he promiſeth him amongſt other bleſſings, I will make thee exceeding fruitfull, and I will make nations of thee, and kings [z] ſhall come out of thee. If kings were contrary to the mind and word of God; he would not by this word, have made it part of this great promiſe and bleſſing, that kings ſhould come from his ſervant Abraham. Anſwearable heer-

[x] 1 Sam. xv. 9. [y] Gen. xvii. 6. [z] ומלכים ממך יצאו

unto, and part of the ſame promiſe and bleſſing, God further ſaith to Abraham; as for Sarai thy wife, [a] Sarah ſhall her name be, which in the hebrew ſignifies a princeſſe. According to which God ſaith, I will bleſſe her, and ſhee ſhall be a mother of nations, and [b] kings of people ſhall be of her. And ſurely this promiſe and bleſſing (in all the parts wherof is a ſtrange conſent and harmony) that kings of ſuch multitudes, ſhould be of his beloved ſervants; would not have bin made by the word of God, if the governement by kings had bin contrary to the mind and word of God. Another promiſe [c] is among the bleſſings which Jacob gives unto his children, that to Judah is, ‡ the ſcepter ſhall not depart from Judah, till Shilo come: that is, the kingly office ſhall not depart from Judah, untill Shilo, that is untill the Meſſiah come. That by the ſcepter is meant the kingly office, I ſuppoſe will not be doubted. And ſo it was among the antienteſt of the heathen, as appears in Homer, of Agamemnon, and in other greek authors. The caduceus was of ſnakes, and a ſcepter, as Fulgentius underſtands it. Jupiter, Saturne, and their other gods did all beare the ſcepter, as a ſigne of their ſoveraignty.

Butt we have a better authority for it as a word denoting a king. The word heer uſed by Jacob for a ſcepter [d], is by the rabins and others interpreted a king; and rendred in greeke [e], a chief governor or king. And in the prophecy of Amos [f], the word that ſignifies one that holdeth a ſcepter, is uſed abſolutely for a king; and of this the holy ſtory of Eſther hath alſo divers inſtances. But it is ſufficiently clear, that the word ſcepter denotes a king: and Jacob's prophecy and bleſſing uppon the houſe of his ſon Judah, that kings for ſo long togither ſhould be of his family, would not have bin dictated by the ſpirit of God, if kings had bin contrary to his word.

[a] שרה [b] Gen. xvii. 16. מלכי עמים ניסנה והיו [c] Gen. xlix. 10.
‡ לא יסור שבט מיהודה [d] שבט • οὐκ ἐκλείψει ἄρχων. [f] Amos i.

Another

Another promiſe is that of the prophet[g], very patheticall. And kings ſhall be thy nurſing fathers, and their queens thy nurſing mothers. The note uppon this is, that kings ſhall be converted to the goſpel, and beſtow their power and authority for the preſervation of the church. Agreeable heerunto is that of the pſalmiſt[h]. The kings of Tarſhiſh and of the iſles (which may more particularly relate to us) ſhall bring preſents; the kings of Sheba, and Seba ſhall bring guifts; yea all kings ſhall worſhip him. The hebrew word ‡ comes from the root[i] which ſignifies one nouriſhed up in faith and trueth: and if kings doe, as they ought, ſo nouriſh their people; I ſuppoſe that none would be offended att kings. The prophet pronounceth it as a promiſed bleſſing to the church of God, that there ſhould be ſuch kings and queens, for the comfort and nouriſhment of Gods people. Which promiſe doubtles, would not have bin made by the word of our heavenly father, if kings had bin contrary to his word.

The ſame prophet[k] ſaith, in another place. The gentiles ſhall come to thy light, and kings to the brightnes of thy riſing. The hebrew word[l] heere uſed for, ſhall come; is from the root which ſignifies, || to walke continually, as kings and all people ought to doe, in the light of the word and goſpel of Chriſt. Paralell and ſtrangely anſwearing to that place of Iſaiah, is the text in the Revelation[m]. And the nations of them that are ſaved, ſhall walke in the light of it: and the kings of the earth doe bring their honor and glory unto it. The place unto which the kings ſhall bring their honor and glory, is expreſt in the ſame chapter[n]. I John ſaw

[g] Iſa. xlix. 23. והיו מלכים אמניך ושרותיהם מיניקותיך [h] Pſal. lxxii. 10, 11.
‡ אמניך [f] אמן [k] Iſa. lx. 3. [l] והלכו || הלך
[m] Rev. xxi. 24 καὶ περιπατήσουσιν τὰ ἔθνη διὰ τοῦ φωτὸς αὐτῆς. καὶ οἱ βασιλεῖς τῆς γῆς φέρουσι τὴν δόξαν καὶ τὴν τίμην αὐτῶν εἰς αὐτήν. [n] Rev. xxi. 2.

the

the holy citty, new Jeruſalem. And he ſaith, [o] that the angel ſhewed him that great citty, the holy Jeruſalem that is interpreted the church of Chriſt, and the immaculate lamb of God the light of it. To which new Jeruſalem it is heer ſaid, that the kings of the earth ſhall bring their honor and glory, and ſhall make glad the citty of God. As the prophecy of Balaam is, ſpeaking of Iſrael. [p] The Lord his God is with him, and the ſhout of a king is among them. The original is, a great noiſe of joy and gladnes bicauſe of a king: which would not have bin pronounced by the word, if kings had bin contrary to it.

By the way we may obſerve, and admire the wonderfull harmony and conſent of the old and new teſtament, even to the ſame words: as in theſe of Iſaiah, and the Revelation, and in many other places of the holy ſcripture.

In this comfortable praediction (certainly to come to paſſe) of the laſt and moſt glorious ſtate of the church of Chriſt, relating to the new Jeruſalem; kings as well as others have the promiſe, to be cittizens of that city; and therfore ſurely, not contrary to that word which ſpeakes it.

Another promiſe is recorded by the wiſe man [q]. The king that faithfully judgeth the poore, his throne ſhall be eſtabliſhed for ever. Which would not be, if ſuch thrones were contrary to the word of God.

I ſhall now mention ſome praecepts in ſcripture, relating unto kings; wherby the word teacheth the duety of kings to their ſubjects, and of ſubjects to their kings; which would not have bin, if

[o] Rev. xxi. 10. [p] Num. xxiii. 21. [q] Pro. xxix. 14.

kings

kings had bin contrary to that word which gives the rules. Moſes ſetts down rules both for king and people [r]. When thou ſhalt ſay I will ſett a king over me, &c. [s] thou ſhalt in any wiſe ſett him king over thee, whom the Lord thy God ſhall chuſe; one from among thy brethren, &c. not a ſtranger. [t] Butt he ſhall not multiply horſes to himſelfe, nor cauſe the people to return to Aegipt. [u] Neither ſhall he multiply wives to himſelfe, that his heart turne not away: neither ſhall he greatly multiply to himſelfe ſilver and gold. [w] And he ſhall write him a copy of this law in a booke. [x] And it ſhall be with him, and he ſhall read therin all the dayes of his life; that he may learn to feare the Lord his God, to keep all the words of this law, and theſe ſtatutes to doe them. [y] That his heart be not lifted up above his brethren, &c. Heere (as the rabbins and ſome others hold) is a poſitive praecept, that people ought to have kings by all means; [z] thou ſhalt place a king over thee. Heer are cleerly praecepts negative and affirmative, both for king and people; how the people ſhall chooſe their king, and how the king ſhall rule over the people, and how he ſhall governe himſelfe. And ſurely the word of God, had not ſett down theſe praecepts in vaine, or if kings had bin againſt that word: nor have directed the choice of an officer, of a king, if the kingly office had bin unlawfull.

The laſt verſe of this chapter, pronounceth a bleſſing to kings obeying this praecept [a]. That he may prolong his dayes in his kingdome, he and his children in the middeſt of Iſrael.

Another praecept for the duety of a king, is that unto Joſhua the ſucceſſor of Moſes, who was alſo a king or monark in Iſrael; where

[r] Deut. xvii. 14, &c. [s] Ver. 15. [t] Ver. 16. [u] Ver. 17. [w] Ver. 18. [x] Ver. 19. [y] Ver. 20. [z] Ver. 15. Ponendo pones ſuper te regem. [a] למען יארך ימים על ממלכתו הוא ובניו בקרב ישראל

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the Lord commaundeth him. [b] Only be thou ſtrong, and very couragious; that thou maiſt obſerve to doe according to all the law which Moſes my ſervant commaunded thee. Turne not from it, to the right hand nor to the left; that thou maiſt proſper, whither ſoever thou goeſt. This booke of the law ſhall not depart out of thy mouth, butt thou ſhalt meditate therin day and night; that thou maiſt obſerve to doe according to all that is written therin. For then ſhalt thou make thy way proſperous, and then thou ſhalt have good ſucceſſe.

Heer is the ſame praecept as to the booke of the law, and the like bleſſing to the obſervation of it, as in Deuteronomy xvii. And it is good for all kings and rulers to remember, and conſtantly to practiſe it.

The wiſe man, by the ſpirit of God, declares this praecept to the people. [c] My ſon feare thou the Lord, and the king. And according to this, it is the admonition of the apoſtle [d] to all people. [e] Feare God, honour the king. Next to that great precept, feare God, is joyned this precept alſo, honour the king; which duety would not have bin injoyned in an evill thing.

The ſame apoſtle [f] in the ſame epiſtle, delivers this precept. Submitt yourſelves to every ordinance of man for the Lords ſake: whither it be to the king as ſupreame, or unto governors as unto them that are ſent by him, for the puniſhment of evill doers, and for the praiſe of them that doe well: for ſo is the will of God.

The apoſtle, we may believe, would not have exhorted obedience unto kings, deſcribed their duety to be ordeined for a puniſhment to

[b] Joſ. i. 7, 8. [c] Pro. xxiv. 21. ירא את יהוה בני ומלך [d] 1 Pet. ii. 17.
[e] Τὸν Θεὸν φοβεῖσθε· Τὸν βασιλέα τιμᾶτε. [f] 1 Pet. ii. 13, 14.

evill

evill doers, and for the praiſe of them that doe well (which none will doubt butt to be pleaſing unto God,) if the governement by kings had bin diſpleaſing to him.

This is explained by his fellow apoſtle. [g] Lett every ſoul be ſubject to the higher powers, for there is no power butt of God; the powers that be are ordeined of God. Whoſoever therfore reſiſteth the power, reſiſteth the ordinance of God: and they that reſiſt, ſhall receive to themſelves damnation. Surely none will deny kings to be comprehended in theſe powers; and conſequently to be the ordinance of God, which cannot be unlawfull but muſt be obeyed, and not reſiſted by any of what judgment ſoever they be, and that under the higheſt penalty, even of damnation. Conſonant heerunto is the advice of the wiſe man. [h] I counſel thee to keep the king's commaundement; and that in regard of the oath of God. A moſt ſtrict obligation to obey kings, and aſſertion of their authority to be from God.

King Solomon, ſpeaking of Chriſt under the name of wiſdome, ſaith: [i] by me kings reign, and princes decree juſtice. The latin verſions render it, [k] in me kings reign, and princes, &c. the vulgar tranſlation is, [l] by me kings reign, &c. the ſyriack verſion ſaith, [m] for me kings reign; and in the 16th verſe, by me princes rule, even all the judges of the earth. The hebrew affixe [n] doth warrant all theſe verſions; and if it be read, by me, in me, or for me kings reign, it teſtifies the reigning of kings to be an ordinance of God: and if ſo, it includes a praecept of obedience to them, as it doth unto princes, nobles, judges, and rulers, whom none (I ſuppoſe in their

[g] Rom. xiii. 1, 2.
[h] Eccleſ. viii. 2.
[i] Pro. viii. 14.
בי מלכים ימלכו ורוזנים יחוקקו צדק
[k] In me reges, &c.
[l] Per me reges, &c.
[m] Propter me reges, &c.
[n] בי

witts) will deny to be alſo of God's ordinance; and with them, kings by name are heere reckoned, as by the ſame inſtitution of God.

I ſhall conclude this praeceptive part, with that of St. Paul to Timothy. [o] I exhort therfore, that firſt of all ſupplications, prayers, interceſſions, and giving of thankes, be made for all men, for kings, and all that are in authority; that we might lead a quiet and peaceable life, in all godlines and honeſty: for this is good, and acceptable in the ſight of God our ſaviour [p], who would have all men to be ſaved, and to come to the knowledge of the truth. Heere we have an expreſſe praecept of the holy apoſtle, to pray, and to give thankes for kings: butt ſurely he would not have exhorted it, if kings had bin unlawfull. Butt this is not devoutly to be imagined of Chriſt's apoſtle; nor that the fruits of an evill thing ſhould be, to lead a peaceable life in all godlines and honeſty: butt he telles us ſo, and that this is the trueth of God.

Butt by this diſcourſe, my intention is not to condemne any other names or formes of governement, of antient and conſtant choice, and approbation with other nations. Every nation hath its own lawes, and cuſtomes. Yett I may ſay, that I have not obſerved any change of names or forme of governement, which hath not proved highly perilous, if not fatall, to the liberty of the countrey where it hath bin made. To lett paſſe our own later ſtoryes, in which particular I was no actor, but many miles diſtant: I ſhall only remember that paſſage of the Romans, who after Tarquin, would have no more the name and title of king amongſt them: butt the ſame and greater power was exerciſed by their new titled officers. After their civill warre, Tacitus [q] obſerves (which was not farre

[o] 1 Tim. ii. 1, 2, 3. [p] Ver. 4. [q] Annal. p. 1. Tuta et frequentia, quam vetera et periculoſa mallent.

eſtranged from our caſe,) that people "were apt to entertain preſent things, with their ſafety; rather than antient, and dangerous."——"That all things being wearied with the civil war, Auguſtus Cæſar took upon him the government under the name of prince." They would not allow him the title of king; but, of "prince of the ſenate;" and to exerciſe far greater power over them, than ever any king had done [r].

The like oppoſition had been made to this name, and title, in the time of his uncle, Julius Cæſar [s], whom they would not ſtile king, but "perpetual dictator, generall of the army," and the like; and afterward, "generall" only. And when one ſaluted him by the name of king; his modeſt anſwer was. "I am not king; but Cæſar [t]." But theſe matters at length came to that paſs; that "the will of Caeſar," (as the civilians hold,) was taken for law [u]."

[r] It is proper to appriſe the reader, that the text is varied a little, in this and the following paragraph, from the author's manuſcript. His propoſition therein ſeems to be, that "any change of names, or forme of government, (in his own words) hath generally proved dangerous, if not fatal to the liberty of the country where it hath been made." This he proves by the example of Rome: and ſeems to allude to the troubles, in his own time, in England. The general reaſoning is taken, probably, from Mr. Selden, where he treats of the introduction of the title of emperor, (Titles of Honour, part 1. c. 2. § 1, 2. edit. 1726): but not without conſulting the originals; for our author reads "plebeius," "one," in Suetonius, where Mr. Selden reads "plebs," "the multitude."

All the variation made by the editor is in reſtoring to Julius, and Auguſtus Cæſar reſpectively, ſuch particulars as the author's tranſcript was found to have miſplaced. (M)

——Cuncta diſcordiis civilibus feſſa, nomine principis ſub imperium cepit——princeps ſenatûs. [s] Regem Romæ poſthac nec dii, nec homines, eſſe patientur. Cicero, de divinat. l. 2. See Mr. Selden, as above. (M) [t] Perpetuus dictator, imperator exercitus, imperator.——Non ſum rex, ſed Cæſar. [u] Voluntas Cæſaris pro lege habebatur.

And thus, from their new title, was introduced perpetuall ſervitude.

Where the title and authority of king, is ſo interwoven and incorporated with the lawes and cuſtomes, as it is in England; with the practiſe and approbation of ſo many hundreds of years, as it hath bin with us; it is impoſſible to be altered without the higheſt daunger of confuſion, both to king and ſtate. This cauſed our wiſe aunceſtors, after the engliſh lawes were eſtabliſhed in Ireland by Poyning's law, to give the ſame title of king as was in England. And this cauſed the Swedes not to permit Eric the firſt, to continue the governement under the title of marſhall; butt by their rickſdagh, enacted him to have the title of king of Sweden.

Certainly the title and authority of kings, and monarchicall governement, is moſt antient and univerſall in all countryes.

England, Scotland, and Ireland, had their kings, as early as any others [w], in this part of the world. And although the learned knight Sir Robert Cotton [x] ſaith, that to ſeeke for the antiquity of any kingdom before the decay of the roman empire, is meere vanity; and that Vortigerne, a native of this iſle, firſt eſtabliſhed heere a free kingdome, 450 years after Chriſt, and ſo left it to the Saxons: yett it may well be ſuppoſed, that he means this only in relation to the roman conqueſt; not to the generall ſtories, which ſufficiently teſtify kings to be of much higher antiquity in moſt nations. And if thoſe of our own may be credited, Brute is recorded, with the people whom he governed, to have ſettled in this iſland, called from him Britain: and at their firſt growing up into a body and common-

[w] Galfr. Mon. Camb. Britannia, &c. [x] Poſthum. p. 76.

wealth,

wealth, Brute was their king: and a continued ſucceſſion of kings from him to our dayes, is mentioned in our ſtories.

Rome had its kings, from the firſt foundation of the citty. And before the eagle ſpred her wings in Germany, they had their ſeverall kings.

[y] France, Spaine, and Italy, had ſeverall kings of perticular parts of them, as antient as their ſtates: butt in Spaine, after thoſe [z] in England and France.

The Swedes derive their name from Suevus, the ſon of Magog nephew of Noah, in the year of the world 1787; and that he was (as he might well be) the firſt of their kings. And with them, the Goths, Vandales, Danes, and other inhabitants of thoſe parts, deduce their race of kings from great antiquity.

It is affirmed [a], that every where in Greece, in the moſt antient times, their ſtates were monarchicall, and not popular. And when their ſenates, or their democracy or optimacies, were in greateſt power; yett then alſo they had their kings.

Moſes was alſo appointed by God to be king of Iſrael, as hath bin remembred; to conduct them out of Aegipt to the promiſed land; when they firſt began to come to a ſettlement, and body of a commonwealth.

The children of Heth called Abraham [b] a mighty prince. And ſo his warre with Chedorlaomer declares him to be, who is ſtiled

[y] Gothofredus. [z] Cottoni poſthum. [a] Pauſanias in Bocoticis, Βασιλεῖαι γὰρ παντὶ τῆς Ἑλλάδος ἦν οὐ δημοκρατίαι, πάλαι καθεστήκεσαν. (M)
[b] Gen. xxiii. 6.

king:

[c] king of Elam: and divers other kings are mentioned in that chapter.

Nimrod is the first king mentioned in the bookes of Moſes: and this by the antients is placed in the age of Abraham, about 340 years after the floud. And that Nimrod was a king, is warranted by the text [d], ſpeaking of him, that the beginning of his kingdome was Babel &c. In the diviſion of the earth [e] among the poſterity of Noah, the heads of families tooke their ſeverall parts, according to their language and families: and they who are named there, and in Gen. xxxvi. were the kings or ſupreame princes of the nations, of which they were authors. And ſo the words [f] of Moſes beare; and ſuch a one Nimrod was. And that diviſion, as it had relation to the more eaſterne and ſouthern parts in Sem and Cham, where kings are of greateſt antiquity: ſo alſo the parts of Japhet and his poſterity, as Gomer, Magog, Madai, and the reſt in their kingdomes, are in antient teſtimonies [g] of the greeke church, extended by expreſſe words, from the northerne parts of Aſia into the iſland of Britaine; for ſo they interpret Moſes words [h], the iſles of the nations were divided by them. Some doe hold, that about Serug's dayes, who was borne about 170 years [i] after the floud, men arrogating to themſelves power over each other, made themſelves emperors and kings; which is before the time of Nimrod. And Sem is ſaid to ſucceed as king, to his father Noah: and this title of king in Sem, is noted [k] to be in expreſſe words in the holy ſtory; if att leaſt, according to the moſt received tradition, Sem and Melchiſedeck were the ſame perſon; for he is named [l] king of Salem.

[c] Gen. xiv. 1. [d] Gen. x. 10. [e] Gen. x. [f] אלופים מלכים
[g] Euſebius. Cedren. Chron. Alexandr. [h] Gen. x. 5. [i] Cedren.
[k] Seld. Tit. hon. pt. i. p. 7. [l] Gen. xiv. 18.

The

The greeke monkes[m] divide the time before the floud, into the time [n] wherein no kings were, which they account 460 years after the creation; and [o] the time which had kings, reckoned by them about 1200 years to the floud, in which time were ten kings; the firſt of whom (ſay they [p]) Alorus was a man deſigned by God himſelfe, to be [q] the ſhepheard of the people. Concerning the ſari of years, and the ridiculous number of the reigne of one king computed to 10800 years; it is, by our before cited author [r], explained and reconciled; and the computation of dayes for years, in that time and with that people, ſhewed.

According to that of the greek monkes: among the Chaldaeans, out of Beroſus and Cedren, are reckoned ten kings, before the floud; of whom, Xiſuther was the tenth, and he eſteemed to be Noah. Butt to this of the chaldaean kings, an objection is made; that the holy ſtory of Moſes, juſtifies it not. To which is anſweared, that uppon a like reaſon we might deny, that ever Enoch made any prophecy, although St. Jude [s] cites it. Butt as that of Enoch, is ſuppoſed to have bin as a tradition [t] conveyed through them who were ſaved in the arke: ſo might this of the chaldaean kings be preſerved, and from the ſame perſons be delivered to ſuch as might afterwards commit it to writing. Which were not at all difficult to conceive, if Xiſuther the laſt of them, were, as Cedren tells us, no other than Noah himſelfe.

Neither are the aegiptian hiſtories without fetching a race of kings among them, in the time alſo before the floud.

[m] Panodorus. Arianus. [n] Χρόνος ἀβασίλευτος. [o] Χρόνος βασίλευτος.
[p] Geo. Syncellus apud Scalig. in not. Euſeb. p. 246. [q] τῦ λαῦ ποιμήν.
[r] Titles of honor, part i. p. 5. [s] Jude, 14. [t] Tertullian de cultu muliebri, c. iii. et al.

Butt

Butt Cedren [u] goes as high as may be, even to Adam himſelfe, whome he calls the firſt king; and ſaith, that he governed or commaunded all mankind, as long as he lived. And [w] Seth ſucceeded him in that empire; and Konan the ſon of Enoch, grandchild to Seth, was king or emperor over all the world. Agreeable with this, is the opinion of thoſe who derive monarchicall governement from the law of nature; and hold, that from the frame of nature itſelfe, man as a civill creature, was directed to this forme of ſubjection [x]. In the beginning, the governement of things and of nations, was by kings. And the excellent philoſopher Hermes Triſmegiſtus [y] telles us of the angells, and the ſupreame heavens being immediately governed by the firſt maker of all things; of the planets, and other ſtarres being ruled by the ſun; and of ſeparated ſouls, and the aire being ſubject to the moone. It is added, that uppon earth, kings are in like ſort governors; as if naturall reaſon had firſt ordeined them on earth, by an unavoidable imitation of the creator's providence, in that inſtitution of a monarchy in the aire, ſtarres and heavens.

[u] Οὗτος ἡγεμόνευσε τοῦ γένους τῶν ἀνθρώπων, δι ὅλης αὐτῦ τῆς ζωῆς. [w] Joſeph Ben Gorion. l. ii. c. 11. et rabbi Abr. Zacuthius, in Juchaſin, fol. 6. b. et rabbi David. in Tzemach. fol. 2. b. part ii. [x] Juſtin. Seneca. Principium rerum gentiumque imperium, penes reges erat. [y] In Κόρη τῦ κόσμυ.

CHAP. VII

Defender of the faith. &c.

WE find antiently in the church, to be ordeined certain [a] advocates of cauſes, who were called, defenders of the church, as appears by a canon [b] of the councell of Carthage; and by the law of the emperor Charles [c], who conſtitutes [d] defenders of the churches, againſt the powers of ſecular, and rich men; and another law [e] appointing defenders of the cauſes of the church, and ſervants of God. From theſe defenders of the church, who were alſo called † advocates and patrons, came our law word advowſon; and the right of patronage in theſe defenders of the church, to preſent clerkes, to eccleſiaſtical benefices.

The ſame learned knight, in his epiſtle to the king before his booke of councells, remembers the title of God's vicar, given by pope Eleutherius [f], to Lucius, our firſt brittiſh king: which is alſo mentioned in ſeverall other authors [g] of our lawe bookes, as a title proper for our kings, and frequently given to them. The Saxon word for it, is, God's delegate, or vicar of Chriſt [h]. And the ſame title of Chriſt's vicar ‡, was afterwards taken by king Edgar, in his charter to the monaſtery of Wincheſter.

[a] Spelmanni gloſſarium, tit. Advocatus. [b] Canon. xcix. ſynod. Carthag. [c] Capitul. Carol. l. v. can. 31. [d] Defenſores eccleſiarum. [e] Lib. vii. can. 308. † Advocati cauſarum eccleſiae. [f] Epiſt. Eleutherii papae. LL. Edw. confeſſor. c. 17. [g] Sir Jo. Davys, in rep. f. 88. b. Bracton, l. i. c. 8. § 5. et l. ii. c. 24. § 2. [h] Cynreger Speligend, Saxon lawes, c. 5.

‡ Notes on Eadmerus, f. 155. a. "Conſult the ſame author (Selden) concerning "the affair of *patronage*, &c. in the beginning of the ſaid Notes; p. 1608, of the ſe- "cond vol. of his works, the edition of 1726." (M) 5 Rep. f. 10.

Butt to come a little lower; in a writ of our king R. 2 [j], is this expreſſion. We are, and will be defenders of the catholicke faith: the very words in the preſent title.

We find alſo in our records of parliament [k], the title given to Humphrey duke of Glouceſter, of defender of England.

Butt to come to the preſent title of defender of the faith, in our kings; it aroſe uppon this occaſion. The romaniſts and lutherans in Germany, having ſome conteſts uppon the pardons, and indulgences graunted by the pope; againſt the which, divers in Germany, and principally Luther, did preach, write and diſpute, in oppoſition to the pope's authority, and theſe bulls. King H. 8. to ingratiate himſelfe the more with his holines, and to gaine his favour, when he ſhould have occaſion to uſe it; did write a volume againſt Luther, in defence of pardons, the papacy, and the ſeaven ſacraments; and ſent it to pope Leo the tenth, to Rome, where the original [l] is yett extant in the Vatican. For this moſt acceptable ſervice, and high deſert, a defence of the faith and power of the ſee of Rome, and that by a kingly pen: it was thought fit by the pope and his cardinals [m], by a golden bull anno 1521, to conferre uppon H. 8. this title of defender of the faith; and it commaunds all chriſtians, that in their directions to him, they ſhould after the word king, adde this, [n] defender of the faith. The bull itſelfe is to be ſeen, in that rare treaſury of pretious collections and monuments,

[j] Breve R. 2. in regiſt. Elienſ. anno 1384. Fidei catholicae defenſores ſumus, et eſſe volumus. [k] Rot. Parl. 3 H. 6. Affidatio dominorum. [l] Franciſc. Swert. in Delic. orb. Chriſt. [m] Sum. conſtit. pontif. Petr. Mathaei, in Leon. X. conſtitut. xii. p. 227. Speed's hiſt. H. 8. &c. [n] Defenſor fidei.

the

the library of my noble friend, Sir Thomas Cotton†; and the tranſcript of it in ſeverall printed authors, and hiſtorians.

Sleidan ſpeaking of this paſſage, ſaith, that the pope gave unto the king an honourable name[o], calling him defender of the church. Butt that title more properly belongs unto the emperor, who is ſtiled, [p] defender of the church, and [q] advocate of the church. And it is a part of his oath att his laſt and moſt ſolemne coronation, which is done by the pope in perſon; when he ſwears to be a perpetual defender of the pontifical dignity, and of the church of Rome. And the like was alſo the ſolemne oath of the more antient emperours.

[r] Some of the old kings of Sicily, uſed titles in their ſtile, ſomewhat like to theſe; as [s] helper, and buckler of the chriſtians; and helper, and defender of the chriſtians.

King H. 8. did not long continue his reverence to the pope's authority. Butt failing in his expectation from him, touching the matter of his deſired divorce from his wife queen Catherine; king Henry theruppon changed his judgement concerning the pope's ſupremacy; and by [t] act of parlement, aſſumed to his crowne the ſupremacy in all cauſes, eccleſiaſticall as well as temporall; and wholly aboliſhed the pope's power and ſupremacy in England, enough contrary to the faith of that church. Nevertheleſs, he ſtill kept his title of defender of the faith; and further added to it by that act of parlement, the high titles of ſupreame head of the church of

† Now at the britiſh Muſeum. (M)

[o] Defenſorem appellans eccleſiae.

[p] Defenſor eccleſiae.

[q] Advocatus eccleſiae.

[r] Scip. Mazel. deſcrit. de Napoli, p. 471.

[s] Chriſtianorum adjutor, clypeus et defenſor.

[t] Stat. 26. H. 8. c. 1.

England; and left theſe titles to his ſon king E. 6. who not only purſued his father's ſteppes as to the ſupremacy of the church of Rome, butt as to their doctrine likewiſe in many points; and began that bleſſed reformation, wherof poſterity injoyes the benefit[u]. Notwithſtanding this difference in faith, yett it was thought fitt for the young king, ſtill to continue that title of defender of the faith, and of ſupream head of the church; which diſcended to his ſiſter queen Mary. Who although ſhe reconciled her kingdomes to the church of Rome, yett ſhe continued not only the title of defender of the faith; butt likewiſe for ſome time, that other title of ſupreame head of the church, which ſhe afterwards left off; and ſo did her ſucceſſors.

Her ſiſter queen Elizabeth proſecuted our happy reformation; and wholly aboliſhed the popiſh power and faith, in her dominions. Yett continued ſhe, and moſt deſervedly, the title of defender of the faith, which ſhe was effectually, in England, Scotland, and Ireland; and further, in Germany, France, and the Netherlands, as their ſtories wittnes.

King James ſucceeded her, in the pious exerciſe of this title of defender of the true faith: ſo did his ſon king Charles the firſt, of bleſſed memory: ſo doth our preſent Charles the ſecond. Though all of them ſince queen Mary, have diſcontinued that other title of ſupreame head of the church on earth, as H. 8. uſed it. And in the [w] firſt year of queen Mary, when the writs of ſummons to the parlement, had not that ſtile of ſupream head of the church; a

[u] Engravings of the medals ſtruck by Hen. VIII. and Edw. VI. upon this occaſion, may be ſeen in the collection now publiſhing by Mr. Francis Perry. The originals being, the firſt in gold, in the britiſh Muſeum; and the latter gilt, in the poſſeſſion of my honoured friend Thomas Hollis, Eſq; (M) [w] 1 Mariae, Dyer. f. 98. a.

queſtion

queſtion was made, whether thoſe writs without that title were legal, or not: and upon deliberation it was reſolved, that thoſe writs were legall, notwithſtanding that title was omitted; and that the act which gave that ſtile, was to be conſtrued only affirmatively; without any negative inference, that the ſtile ſhould not be good without it. Thus, notwithſtanding the ſeverall changes of religion and perſwaſion of faith, yett ſtill the title of defender of the faith was continued. And there can be butt one true faith, which will never be extinguiſhed; though by difference of opinion (wherof we ſee too much in our time) it may be obſcured. Nor do ſome believe the way to heale our breaches, will be by too much rigor, or impoſing; [x] butt according to that clemency and tendernes of his Majeſtye's gracious proclamation touching thoſe matters, will be the beſt means to defend, and increaſe the true faith of Chriſt among us.

[x] The following ſeems to be the true reading, viz. "but that clemency and tenderneſs, according to his majeſty's gracious proclamation" &c. (M)

CHAP. VIII

[a] To the ſheriffe.

THIS officer ſheriffe, is in latin ſtiled vicecomes, properly (ſaith Spelman [b]) a fiſcal judge, he that hath care and charge of the revenues; tranſlated, the [c] deputy of the earle, and governor of the ſhire or countey. The ſaxons called him [d] grave, and we call him reve. The word ſignifies to take, to force away from one, to exact: theruppon it is ſaid, [e] if any one invite † a reve, to take from another his goods unjuſtly &c. [f] and if any one ſtay a reve, that is a fiſcall judge &c. And ſuch an officer was often called the king's [g] exactor. Wheruppon it is ſaid, [h] with much labour, and pleading I freed myſelfe from the oppreſſion of the king's exactors, whom they call reeves: and divers other inſtances are of the like interpretation.

[i] Lambard gives the word a more honorable derivation, from the ſaxon word which ſignifies to governe. And indeed this officer hath both the charge of collecting the king's revenue, and is a governor or judge within his countey. He was an officer under the earle, or more properly inſtead of the earle. The Wiſi-goths called him vicarius; and the Normans vice comes. We ſtile him ſheriffe, that is reve of the ſhire; ſchireve, and ſhiregereve antiently called; and [k] high reve, chiefe greve or ruler of the countey.

[a] Vice comiti. [b] Gloſſarium verbo Grafio, Judex fiſcalis. [c] Comitis vicarius. [d] ȝeneꝛa ȝneꝛa [e] LL. Salic. tit. 33. Si quis grafionem &c

† The original word, as quoted by Sir H. Spelman, is *invitaverit*; and therefore I have preſumed, that the word *imitate*, read in this place, in Mr. Whitelocke's manuſcript, is a ſlip of the pen. (M)

[f] Leg. Ripuar. tit. 51. Si quis judicem fiſcalem quem grafionem appellant &c. [g] Æthelwerdus, l. iii. anno 787. [h] Suggerius de poſſeſſ. Beati Dionyſii, ——" Ab oppreſſione exactorum regiorum quos dicunt grafiones. [i] Lambard Saxon words, ȝeneꝛa à ȝeneccan. [k] hihȝeneꝛa

In the lawes of St. Edward [l], a reve or greve is thus deſcribed. Greve is a name of power, and in latin ſignifies a chiefe commaund, and is as much as to ſay, dominus, lord; and is compounded of the engliſh words [m], which ſignify, peace, and miſery: an officer to keep the peace, and to puniſh, and bring miſery on thoſe who breake it. Antiently they were called [n] aldermen, that is elders.

My lord Coke [o] agrees this etimology of the word ſheriffe, from the ſaxon word ſcire, that is a countey, and reve, that is a keeper or gardein of the ſhire; and ſometime they were called [p] ſhireman, or eldeman of the ſhire. And to this day the ſheriff's patent is, we commit to you the [q] cuſtody of the countey.

[r] Shirereeve, and ſhiregereve, ſhrive, and ſheriffe are all the ſame thing. It is alſo agreed, that this officer was long before the time of William the firſt [s], as is teſtified by divers of our antiquaries. What was ſherife, or ſhrive, or ſchiregreve (ſaith Selden) butt alderman.

Ingulphus [t] ſpeaking of king Alfred's diviſion of England into ſhires, hundreds &c. ſaith, that he divided the governors of provinces, which before were called vicedomini, into two offices: that is judges, whom we now call juſtices; and into vicecomites, ſherifs, who ſtill reteine that name. Butt (ſaith Sir Roger Owen [u]) you muſt underſtand Ingulphus, that Alfred did more perfectly, or abſo-

[l] C. xxxv. nomen poteſtatis. (quaere cap. ii.)
[m] ȝerð, and væ.
[n] Ealdermen.
[o] Epiſt. 9. rep.
[p] Leg. Inae, c. viii.
[q] Cuſtodiam comitatûs.
[r] Tit. hon. 2 part, p. 610. (2d. edit. M.)
[s] Spelman. Co. ep. 9. rep.
Sir Roger Owen MS.
[t] Hiſt. f. 495. Malmeſb. l. ii. de geſt. reg. c. iv.
[u] MS. 1. part, f. 339. Co. epiſt. 9. rep.

lutely

lutely reduce thoſe countryes into ſhires, than they were before. And the antiquity of ſherifs is evinced by all the charters of the monaſteries and biſhopricks, founded afore the conqueſt, inhibiting the ſheriffe to meddle within the eccleſiaſtical fee: and in Domeſday, almoſt in every other leafe, there is perticular mention of the ſheriffs that held land [w], in the confeſſor's time. In the MS. of Rivalenſis is remembred, what care Alfred tooke, that the poore men of each countey ſhould not be oppreſſed by the ſherife and his miniſters. In the MS. of Peterburgh, to one of the deeds of the confeſſor is ſubſcribed, I Moulſea vicecomes. And in the charter of Withaſius king of Mercia, anno 833, is mention of the vicecomes. So in the letters patents of king Kenulphe of Mercia, is named Theraldus ſherife of Lincolnſhire. Likewiſe in the letters patents of king Edgar, anno 972, reſtoring Medhamſteed, is a clauſe, that the earle or ſherife ſhall not intermeddle there. In a ſubſcription to king Edred's charter to the abbey of Crowland, dated 948, is, [x] I Bingulph, vice dominus; [y] I Alfer, vicecomes: and there certain lands are diſcharged [z] of the ayds of ſherifs, by that name; and a precept vice domino Lincolne, and to other our miniſters in thoſe parts, to make a perambulation of the iſle of Crowland. Very many of the like inſtances might be collected, proving ſherifs by the name of vicecomites, to have bin in uſe with us, long before the time of W. 1.; notwithſtanding Polidor Virgil's opinion [a], that they were firſt introduced by him. Butt it is no ſtrange thing for that italian gentleman, to miſtake in matters of law, and antiquity, touching England.

[w] Terra vicecomitis.
[x] Ego Bingulph vicedominus conſului.
[y] Ego Alfer vicecomes audivi &c.
[z] Ab auxiliis vicecomitum.
[a] F. 151.

Sir

Sir Roger Owen affirmes, that forein countryes have alſo the office of our ſherife, vicecomes, in ſome manner anſwearable to his place in England. In the governement of Flaunders [b], is mention of vicecomes, as a middle judicatory: alſo of vicecomites in Italy [c]. And in Germany there is mention of a patent, dated 1224 [d], wherby a countey is given to the church; and a prohibition, that [e] the ſherife ſhall not intermeddle in the countey. The landts grave, rhin grave &c. are in effect ſherifs of the province of the Rhine, and of ſuch a land or territory. By the cuſtomary of Normandy, they had antiently ſheriffs there as in England. And for Paris, att this day the vicomtrey, or countey, is the liberty of the citty. Mention is made alſo in their authors [f], of the ſherifs of Blois. And in the edict of Frauncis the firſt [g], the viſcounts and receivers of the king's revenues, are made eſpecially accomptants. In ſome towns in France [h], the head officer is called viſcount; and in Normandy, they have charge of the duke's revenue. Portugal is [i] divided into ſix comercas; the governor of each of them is like our ſheriffe. And ſo is the ſpaniſh officer [k] called adalantadas. That of Hungary, in reſemblance to our antient ſheriffs is obſervable [l], that it was divided into 70 comitatus, countyes; and that two parts of the profit of all juſtice, came to the king's treaſury, and the third part remained to the count. Which is alſo the right of ſome viſcounts in Fraunce [m]; and which is the ſame with us in England, as Gervaſe of Tilbury noteth [n], deſcribing a comes to be he who re-

[b] Bucelarius. [c] Grantzius metropol. 9. [d] Baronius Annal. Eccleſ. l. xvii. [e] Vicecomes non intromittat in comitatu. [f] Carnacenſis. [g] Anno 1540. [h] Caſſanaeus. [i] Comeſtagius. [k] Lucius Morinaeus. [l] Otho Friſingens. de geſt. Frederic. 1. l. i. c. 31. [m] Charles l'Oyſeaux de mediocr. ſeign. c. vii. § 19. [n] In Dialog. de ſcaccario, Qui tertiam partem et portionem.

ceiveth the third part and portion, of the profits which ariſe by pleas in the countey.

In domeſday booke, concerning Ipſwich it is recorded, that queen Edena hath two parts, and comes Gueſt the third part. And of Norwich, that it payd 20 lib. to the king, and to the earle 10 lib. The like of Lewis, two parts to the king, and the third to the earle. Butt this was only where it was graunted by the king. The epiſtle to the 9 Report, goes further, and ſaith, that albeit the Saxons gave this officer the vulgar name uſed to this day; yett it is manifeſt, that the office was of antient time, before they ſett any foot in England. Some reſemble it to the officer of the Hebrewes [n], who was ruler of a thouſand families, according to the inſtitution of Moſes by Jethroe's advice. And this ruler led his men forth to battle, and was judge of their civill controverſies. So is our ſheriffe att this day, commaunder of the power of the countey, and judge in his countey court; wherof occaſion will be given to ſpeak more in another place.

[o] Arpennius ſaith, that ſhireeve is a name of honor in the Arabick. The word vice comes for an officiary title, is frequently uſed by forein writers [p]. And in France [q], the provoſt in ſome places, is the ſame officer with our ſherifs.

Grotius recites the old officers of the Germans, of whom Caeſar affirmes, that there was no common magiſtracy: butt [r] the princes of

[n] Exod. xviii. 21. [o] Erpenius (Thomas) probably. (M) [p] Thuanus, l. xliii. f. 894. 900. 906. 635. [q] Paſquier Recherches, f. 604. Le provoſt qu'ils appellent ſheres. [r] Lib. vi. Principes regionum et pagorum inter ſuos jus dicunt. The word *pagus*, in this place, ſeems to anſwer to the word hamlet, village, or *wick* literally; and thus Caeſar and Tacitus agree. (M)

regions,

regions, and *countryes*, give judgement among their people, and decide their controverſies. And Tacitus relates [s], that the lawes were adminiſtred in the countryes, and towns: ſo is it by the ſherifs of our countyes. And Tacitus ſaith, that the princes uſed to be elected: ſo were our ſherifs in England. Many times the king [t] to gratify the people, not only by writ, butt by parlement uſed to grant the election of ſherifs or juſtices to his people. As may appeare by the ſtatute of Articuli ſuper chartas, and by the records in the tower. In the ſixt year of king John, the men of Cornewall did chooſe their ſherifs themſelves. And by the records, 11 E. 3. the king graunted to his ſon the black prince, duke of Cornwall, that for ever after, the dukes of Cornwall and their heirs, ſhould chooſe ſherifs of Cornwall, as the king did in other countyes. And king H. 7. by his letters patents [u], graunted to Arthur his eldeſt ſon, prince of Wales, that he ſhould chooſe all the ſherifs within the ſaid principality.

[w] Spelman holds, that in the folkmote, which was the generall court of the countey, the ſherifs were elected by the ſuffrage of the people, untill the 9th year of E. 2. His warrant for this opinion, is from the lawes of the confeſſor [x], which ſay, that the herotoches were choſen by the common councel, for the common profit of the kingdome, through all the provinces and countryes, in each countey in full [y] folkmote: as alſo ſherifs of provinces and counties, ought to be elected.

[s] De mor. German. [t] Sir Rog. Owen MS. part i. p. 235. [u] Juſt. Dodderidge Cornwall pat. dated 5 H. 7. [w] polemore. Gloſſar. verb. Folcmot, ſuffragio populi electi ſunt vicecomites. [x] LL. Edw. conf. c. xxxv. [y] polemore.

This ſeems to contradict their opinion, who hold, that the herotoches and ſherifs were the ſame officer. They are heere diſtinguiſhed; and a heretoche ſignifies the generall or leader of an army. Yett in the northerne countryes, they have att this day, an offieer of much like power with our ſherife in his praecinct; whom they call an hertocht. And in ſome places they call him landts-heved, that is, head of the land where his governement is. Whence alſo is the name of landtſgrave in Germany, and the old name of ledgereve in England. And this heretocht and landtſheved, had the commaund of the forces of the province, and is judge of all their controverſies: butt an appeal lyes from his judgment, to the king. So it doth from the judgements in the ſheriffs courts, to the king's bench. And the ſherife had antiently the power of the countey in his hands, as he hath att this day. And it is affirmed, that the noble family of the Aſhburnhams in Suſſex, have an inſtrument or writing from the conquerour, commaunding Aſhburnham to come to him [z], with the power of his countey.

The election of ſherifs ſeemes to have bin in the people, till 9th E. 2 [a]. as hath bin noted. And then a law was made, that ſherifs ſhould be aſſigned by the chancellor, treaſurer, barons of the exchequer, and by the juſtices; and ſuch to be made, as had ſufficient land within the ſhire. Butt this was an alteration of the former ſtatute [b] of Articuli ſuper chartas which gives the election of ſherifs to the people, which is againe [c] recited in that law; "whereas the king hath graunted the election of ſherifs to the "commons of the ſhire, &c.:" butt this ſtatute of 9th E. 2. makes the alteration. And king E. 3. [d] enacts, that the ſherifs ſhall be

[z] Cum poſſe comitatus ſui.
[a] Stat. 9 E. 2. Of ſherifs.
[b] 28 E. 1. Articuli ſuper chartas, c. viii.
[c] Articuli ſuper chartas, c. xiii.
[d] Stat. 14 E. 3 c. vii.

ordeined

ordeined by the chancellor, treaſurer, and chiefe baron of the exchequer; taking to them the chiefe juſtices, on the morrow of All Souls, att the exchequer. And Forteſcue [e] deſcribes the manner of chooſing them, as att this day. That the morrow after All Souls, all the king's counſellors (ſaith he) meet in the king's exchequer, as well the lords ſpirituall and temporall, as all other the juſtices, all the barons of the exchequer, the maſter of the rolles, and certain other officers: where all theſe with one common aſſent, doe name of every countey, three knights or eſquires, whom among other of the ſaid countey, they take to be of good diſpoſition and fame, and beſt diſpoſed to the office of ſherife, of that countey. Of the which three, the king chooſeth one, whom by his letters patents he appointeth ſherife of the countey for the year following; which was ordeined by the ſame ſtatute [f], that no ſherife ſhould tarry in his bailiwick above one year; and the ſame by another ſtatute afterwards. Though before, they [g] were ſometimes in fee, ſometimes for life, and for many years, as appears by the ſtatute of Articuli ſuper chartas, and other ſtatutes, and the bookes of our lawe: and to this day, the lord Clifford's heirs continue ſherifs of the county of Weſtmerland in fee. The like ſherifs in fee, they have to this day in Scotland [h]; and the ſame officer by the name of ſchireve, as with us in England.

They were ordeined in Wales [i], by king E. 1. The office of high ſherife is full of honor, and power [k]. For honor, he hath

[e] De laudib. leg. Angl. c. xxiii. [f] Stat. 42. E. 3. c. ix. [g] Vincent's extract of ſheriffs, out of the pipe rolles. Rot. pat. 16. E. 1. m. 15. 14 Jac. rep. MS. f. 18. 4 et 5 P. et M. Dyer 151. 35 E. 3. interpleder 15. Co. ſur Lit. f. 168. Rot. pat. 14 E. 1. m. 9. 1 H. 4. c. xi. [h] Cambden Scotland. f. 8, 17. [i] Stat. Ruthland. 12 E. 1. [k] M. 13. Jac. B. R. MS. rep. f. 33 et 45.

precedence

precedence before all noblemen within his countey; they are placed before barons, in a charter of king Steven [1] to the hoſpital of St. Leonard's in Yorkſhire: and every daye's experience ſheweth it.

For power, he is the king's lieutenant in the countey; hath the cuſtody of it graunted to him, and the power of the countey under his commaund. The power and authority of his office, may be ſummed up to conſiſt chiefly in three points; to collect the king's dues, to execute the king's proces, and to preſerve the king's peace within his countey.

[1] In biblioth. Cotton.

CHAP. IX

Of Bucks.

I Have much reaſon from nature, education, favour and habitation, to honor and affect this country [a]. It hath nouriſhed and honored me: and it is butt juſtice, that I ſhould endeavour to doe them reſpect and ſervice, where I am thus obliged. I have therfore choſen this writ to place my imperfect notes uppon it, rather than another; and wiſh it were in my capacity, to give a teſtimony of the honor, and love, I ow and beare to this countrey. It is one of the moſt pleaſant, populous and fruitful ſhires of England; and as little wanting of any thing requiſite for the ſuſtentation, and delight of the life of man.

It takes the name of Buckinghamſhire, not from buckes or deere (as ſome have fancyed) but from the ſaxon word [b] buchen, as Cambden [c] rightly ſurmiſeth, which ſignifyeth beech trees, wherof, in one part of this countrey there is great abundance: as that countrey in Germany, bearing beech trees, is therfore (ſaith he) called Buchonia: and a town in Norfolke, fruitfull of beech trees, is from thence called Buckenham.

There may be the more probability for this conjecture, in regard of the words, both in Germany and in the northerne countryes, by which they call beech trees, and have ſome affinity with the ſound of Bucks. The high dutch call a beech, ein buckban, and buchen. The low dutch call it buckenboom, and beeck-boom. The ſwediſh and daniſh ſay bog, and boken. And from theſe appellations might

[a] Bucks. [b] Buchen. [c] Britania, Buckinghamſhire, p. 393.

probably

probably come, the name (as it is in ſome antient records) of Bokenhamſhire, and as we att this day terme it, of Buckinghamſhire. Other of the languages in thoſe partes of the world, alſo have ſome likenes of ſound heerunto. As the poles call it bukow dreewo; and the hungarians call it bik. And from theſe or ſome of them, it is no ſtreined derivation of the name of the countey of Buckingham.

It is divided into two parts, the hilly and woody countrey, which they call the chilterne; and the low and fatt countrey, which is called the vale. The Chilterne [d] takes its name, from the chalke wherof thoſe hilles are compoſed; which the old engliſh called cylt, and we now call chalke.

Some fetch it from the latin word calx, for chalke. With which agreeth the ſwediſh and daniſh word kalck, for chalke. And from thence not improbably, the name of our chiltern countrey.

This iſland ſome doe hold, was called Albania [e], from the white cliffes, or chalke hills along the coaſts, eſpecially between us and France.

From this chilterne countrey may a good omen be produced, that their abounding with chalke, may cauſe a marke of approbation on them: as it was of old, [f] when they ſaid they would marke one with chalke, it was to commend and approve him; as to marke one with a coale, ſignifyed to condemne him. This chilterne countrey, though not of ſo fertile a ſoyle as the vale, yett it is very healthfull and pleaſant, and of good profit to the induſtrious inhabitants. Theſe

[d] Cylterne [e] Ab albis rupibus. [f] Cretâ notare, pro approbare; ſicut carbone notare, pro damnare.

chalky

chalky hills are richly adorned with pleaſant woods and groves, conſiſting for the moſt part of beech, which crown the topps of the hills; and att the foote of them, gently glides the river Thames, ſtaying to carry their burdens (which are not ſmalle) of wood, and come to her chief citty London; and returnes money, and other neceſſary commodities in exchange for them. Indeed ſhe is a good neighbour, enriching this countrey by her navigablenes, and allowing them ſufficient meadow for their hay, and great ſtore of ſalmons, trouts, pikes, pearch, eeles, and other good fiſh, for their proviſions. She haſtens not by a quick ſtream, though ſweet and clear, through this countrey: butt ſlowly keeps on her way, delighted with her flowery bankes; and the bending groves ſaluting her.

Of paſture ground, the Chilterne hath no plenty, butt enough to ſerve their turne. And the arable by labour yields a great increaſe, and is alwayes improveable; when the richer lands admitt of no amendement, butt att preſent yield their uttmoſt profit: butt the chilterne ground inviteth induſtry, and promiſeth the laborious huſbandman a recompence anſwearable to his paines; eſpecially in a wett ſeaſon, according to their old proverbe:

Every day a ſhowre of rayne,
And uppon each Sunday twayne.

It breeds men of able bodyes, quick and lively ſpirits, healthfull conſtitutions, inured to labour, and in great numbers; fitt to ſerve their king and countrey.

The other part of this countrey, which they call the vale, is a moſt rich and fruitfull countrey, full of corne, and of large and fatt cattle, with which they ſupply London, as well as themſelves and

their neighbours. And although the cattle of the Chilterne be not so large, yett the meat is sweet and wholsome.

The vale is generally champion, open spacious fields, affording much pleasure to the gentleman, in hunting and hawking, and therby inuring them to exercise, and acquainting them with their countrey; which are manlike recreations, and usefull exercises. I mean not such hunters, of whom the poet [g] exclaimes,

> The hunter stayes in the cold ayre, and wett;
> His tender wife att home he doth forgett.

Of whom Petrarch saith: One may often reade of Plato playing the philosopher, Homer the poet, Tully the orator, and Cæsar tryumphing: butt (saith he) [h] they will never reade any thing of a hunter, who consumes all his time in vaine sportes, wholly neglecting his serious affayres. To such a one our author saith: This is the love, this the felicity, this the all, which you render to God, your countrey, parents, and friends! [i] A little of the torne prey, and sweat, and dust; and an evening story of the losse of day-light. Butt I am none of those who condemne the generous and healthfull exercise of hunting, and hawking; for then I should condemne myselfe. The holy scripture approves hunting. As when Isaac [k] sent forth his son Esau, to hunt. And by that ordinance: [l] That whosoever hunteth and catcheth any beast or fowle (which justifies both hunting and hawking) that may be eaten, he shall poure out the bloud therof, &c. And by

[g] Horace, lib. i. ode 1. ——— Manet sub Jove frigido
Venator, teneræ conjugis immemor.

[h] Venatorem puto non legerint. [i] Laniatæ predæ paululum, et sudorem et pulverem; et nocturnam perditæ lucis historiam. [k] Gen. xxvii. 5.

[l] Levit. xvii. 3.

that

that paſſage: [m] The ſloathful man roaſteth not that which he tooke in hunting. And experience teacheth, that all nations have uſed, and delighted in, theſe ſports.

The Graecians allowed hunting: and Plato giveth the rule, that all kind of hunting, and that with hounds, ought to be uſed by the young men, bicauſe of the advantage it brings [n] in knowing their own countrey; and to breed them up in exerciſe and hardſhip, and with the ſtrength of our bodyes, is to be approved [o].

The

[m] Prov. xii. 27. [n] In cognoſcendo ſuam regionem. [o] Plato de Leg. Corporis noſtri viribus, probanda eſt.—This period is rather obſcure. The author ſeems to mean that, by the authority of Plato, "hunting which is performed with hounds, &c. or with the activity and ſtrength of the body, is to be approved of in young men:" and he gives for reaſons, "that they may know the ſituation of the country, and be bred up in exerciſe and hardſhip." The paſſage, referred to, is at the end of the 7th book, vol. 2. p. 823-4. edit. Serran. which I have tranſcribed, for the reader's ſatisfaction. I have alſo ſubjoined what may be called Plato's game law. Τὸν μὲν νομοθέτην ἐπαινέσαι καὶ ψέξαι χρεὼν τὰ περὶ θήρας, πρὸς τὰς τῶν νέων πόνους τε καὶ ἐπιτηδεύματα.——Μόνη δὴ πᾶσι λοιπὴ καὶ ἀρίστη ἡ τῶν τετραπόδων, ἵπποις, καὶ κυσὶ, καὶ τοῖς ἑαυτῶν θήρα σώμασιν· ὧν ἁπάντων κρατοῦσι δρόμοις καὶ πληγαῖς καὶ βολαῖς, αὐτόχειρες θηρεύοντες, ὅσοις ἀνδρείας τῆς θείας ἐπιμελές.——Νόμος δέ ὅδε. Τούτους μηδεὶς ἱεροὺς ὅλως θηρευτὰς κωλυέτο, ὅπῃ καὶ ὅπηπερ ἂν ἐθέλωσι κυνηγετεῖν. Νυκτερευτὴν δὲ, κυσὶ καὶ πλέκταις πιστὸν, μηδεὶς μηδέποτε ἐάσῃ μηδαμοῦ θηρεῦσαι. Τὸν ὀρνιθευτὴν δὲ ἐν ἀγροῖς μὲν καὶ ὄρεσι, μὴ κωλυέτω· ἐν ἐργασίμοις δὲ καὶ ἱεροῖς † ἁγίοις (fortè ὄροις) ἐξειργέτω ὁ προστυγχάνων.

Which may be thus rendered into Engliſh.

"The lawgiver ought to recommend, and alſo to ſet a mark of diſapprobation upon, the different kinds of hunting as they are proper, more or leſs, for the employment and inſtitution of youth."——Having then mentioned, but not approved of, divers kinds; the Athenian in the dialogue ſubjoins.——"The only hunting which remains, and which is the beſt for young men, is that of quadrupeds, with horſes, and dogs, and with their own perſons. For hunters, who delight in that manhood which is divine, catch all ſuch game by ſwiftneſs of body, and with blows and darts from their own

The tumultuouſe hunting, in other countreys, affords little pleaſure. Butt in England, in Bucks, to ſee a pack of nimble working hounds well ſuited, well mouthed, and well hunted, to follow a chace with ſtrange cunning, diligence and wonder of ſcent, which was not beſtowed on them, nor the cunning and leaving that ſcent by the creature, butt for the end of hunting; to heare their ſweet lowd muſicke, to follow them att a fleet rate, leaving their foot commaunders behind them: is an exerciſe and recreation fit for nobles, and active ſpirits; and a pleaſure worthy of a prince, and his aſſociates. Butt I muſt aſk pardon for this digreſſion, in the ſence I have of the pleaſure of this countrey, and of my obligations to my noble countrymen.

All over this countey are many pleaſant and rich ſeats of the nobility, and gentry; who live in commendable hoſpitality, and not ingaged in factions. The yeomandry are ſtout, and civill, and live comfortably; and their farmers are not in penury. The houſes are more ſcattered in the Chilterne, than in the vale where they ſtand thicker togither, and appear more in towns; the perticular deſcription whereof will deſerve a ſpeciall treatiſe to ſett them forth, with the luſtre and rights and antiquity of the nobles and gentlemen, who are the lords of them.

This countey was antiently joyned with Bedfordſhire, in one ſhrivedome; and the gentlemen of each countey choſen in turne to

hands——And be this the law. Such as theſe, who are indeed ſacred hunters, let no one hinder, whenſoever and as far as they are pleaſed to hunt. But the night poacher, who truſteth to his dogs and his nets, let no one any where, or in any wiſe, ſuffer to hunt. And let him who meets the fowler in the fallow fields, and on the downs, not hinder him: but he may be driven out of the wrought grounds, and ſacred places," &c. (M)

be

be ſheriffs of both countyes: which I have the more cauſe to remember, my own great grandfather being the laſt ſherife of both countyes, in queen Elizabeth's time, when they were divided, as ſeveral others were, which are in Vincent's extracts[p].

Middleſex, which[q] was joyned to London, continues in the ſame ſherifwick. [r] One ſherife was of Warwick and Leiceſterſhire, till queen Elizabeth's time. [s] One was made ſherife of Oxon, and Berks, by H. 6.; and by queen El. divided. [t] In Edward the firſt's time, an archbiſhop was ſherife of Nottingham, and Derby; and many other ſherifs were antiently of two countyes. Butt by queen Elizabeth, each county had its perticular ſherife, and ſo continues.

This countey of Buckingham had the perticular honor, before other ſhires of England, that the eldeſt ſon of the king was made ſherife of this countey, by his father king Henry the third[u]; and ſo he is named in the rolles, Edward the firſt borne of the king, ſherife of the countey of Buckingham. And may all honor and happines be continued to this noble countey, and her worthy inhabitants!

[p] Out of the pipe rolles. [q] Rot. pat. 50 H. 3. [r] 5 E. 2.
[s] 37 H. 6. 21. [t] 2 E. 1. Rot. liberat. et allocat. m. 3. [u] Record. temp. H. 3.

CHAP. X.

Greeting.

THIS is a word of ſalutation; and the meaning of it appears in that paſſage[a], where David ſent to Nabal: Goe to Nabal, and greet him in my name; and thus ſhall ye ſay to him that liveth in proſperity: Peace be both to thee, and peace be to thine houſe, and peace be unto all that thou haſt! Wiſhes of peace and proſperity, by way of ſalutation, to the party; and that from a king, to a ſubject.

The vulgar latin and the arabick verſions have it, [b] You ſhall ſalute him in my name. And it was the ordinary phraſe of ſalutation among the hebrewes, Peace be unto you! As in that paſſage of Samuel to Saul: [c] They will ſalute thee, that is, aſke thee of peace. Thus David [d] ſaluted the people; and Chriſt himſelfe ſaith to his diſciples, [e] all haile! So the angell ſalutes Mary [f]; and very many inſtances of the like are obvious in the holy ſtory. And generally in all nations, the cuſtome of ſaluting one another, and perticularly of kings and princes ſaluting of their ſubjects, was taken up and is in uſe att this day. It is no other butt a kind of bleſſing, and prayer of proſperity, to thoſe whom they ſalute, or write unto. And therfore is called a ſalute [g], from wiſhing health and ſafety to the party, ſo the hebrew word bears it; for a bleſſing, which all kings who are fathers of their country, doe, or ought to give unto their people, on all occaſions.

[a] 1 Sam. xxv. 5, 6. [b] Salutabitis eum nomine meo. [c] 1 Sam. x. 4. [d] 1 Sam. xxx. 21. [e] Matt. xxviii. 9. [f] Lu. i. 28.
[g] Saluto, ſalutem opto.

In

In the moſt antient of our records, patents, commiſſions, and writs of our kings, the ſame word [h] greeting is inſerted. And ſo it hath bin generally uſed, both with us, and in all other countryes. The pope writes, [i] Greeting, and the apoſtolicall benediction! in the beginning of his bulles. The emperor writes, [k] To ſuch a one, grace and all good! in his patents to his ſubjects. And in others, To ſuch a one, our imperiall grace and all good! &c.

The king of France [l] writes, To all preſent and to come, greeting.

The king of Spayne writeth to all his officers, and to all his people, † Greeting and grace! &c. And this is the generall ſtile of princes, when they write unto their nobles, and officers; and frequently, to their inferiour ſubjects.

This gives a good note and caution for princes to be humble, to ſalute their people, to bleſſe them, and to wiſh and indeavour their wellfare. Moſes, who was a moſt abſolute prince, is ſtiled [m] very meeke, above all the men which were uppon the face of the earth. [n] Nothing is more kingly and munificent, than to love, and wiſh well to all men. St. Gregory ſaith, [o] that the more high one is by nature, and the more humbly he carryes himſelfe, the more deare he will be to the people; who love nothing better than greetings, and reſpects from their ſuperiours: and that love [p] of men is moſt beloved

[h] Salutem. [i] Salutem et apoſtolicam benedictionem. [k] Aldus Manutius in vitâ Ludovic. 4. et Margnardus Fehaerus, p. 31; gratiam et omne bonum. [l] Les edicts des roys de France, tom. i. l. 1. tit. 5. Salut. &c. † Salud y gracia. [m] Num. xii. 3. [n] Cicero. l. i. de Orat. Nihil tam regium, &c. [o] L. vi. Quo ſublimior eſt naturâ, eo humaniorem inferioribus ſeſe ſi præbuerit, charior populo futurus eſt. [p] Φιλανθρωπία.

by

by them. According is that of Seneca; [q] he that will be beloved, lett him rule with a courteous hand.

[r] The graecian king Ageſilaus, writing for the releaſe of a captive, thus expreſſeth himſelfe. If he hath not offended, I intreat, that you would forgive the man: if he hath offended, forgive me: but howſoever forgive, &c. And ſurely it is no diſhonor, nor diminution to the greateſt prince, to uſe civilities, and courteous ſalutations to his people. As Bertram notes in his preface, that with princes, greatnes and courteſy ought to ſtrive, who ſhall excell: and the greater they are in dignity, the more they ſhould overcome with affability. [s] The more eminent his dignity is, and the more high one ſitts, the more courteouſly ſhould he demeane himſelfe in civill converſation. The pſalmiſt [t] inſtructs thus: A man's pride ſhall bring him low, butt honor ſhall uphold the humble. The more honorable a man is, he ought to be the more humble: and the more humble a man is, he will be the more honorable. Wherunto that paſſage in St. Matthew [u], cited out of Micah [w], ſeemes to have an alluſion. In Micah it is: Although thou be little among the thouſands of Judah, yett out of thee ſhall he come forth unto me, that is to be ruler in Iſrael. Uppon which it is noted [x], that the words of the prophet may be retained, and yett the ſence of Matthew cleared. The prophet ſpeakes by a negative interrogation. The ſyriack verſion is; [y] as if thou wert the leaſt, &c. The arabick ſaith;

[q] S. polit. c. xii. Qui vult amari, languidâ regnet manu. [r] Plut. in apotheg. Lacon. Si nihil peccavit, oro ut hominem dimittas; ſi peccavit, mihi dimitte; ſed omnino dimitte, &c. [s] Quo eminentior eſt dignitas, et ſublimius *faſtidium*, (quære faſtigium? M.) tanto civilius in civili converſatione ſeſe dimittat. [t] Pſal. xxix. 23. [u] Matt. ii. 6. [w] Mic. v. 2. [x] Spanhemius, Wallæus. [y] Quaſi minima fuiſſi, &c.

art thou ſmall? by interrogation. Uppon the whole is thus concluded, by Wallæus. That which the prophet by interrogation, and more obſcurely ſetts forth; that the evangeliſt would teach us, by an open negative. Thou art the leaſt, and therfore thou art not the leaſt. And though thou art the leaſt; yet bicauſe thou haſt honored God more than the reſt, God will honor thee more than the reſt of the princes of Judah. Thy being little and humble, ſhall bring thee to the greateſt dignity, and honor. Out of thee ſhall come the greateſt princes; which will be to thee greater honor, than all the reſt have. Thou ſhalt produce that great prince David; and after him, that king of kings and lord of lords, that great prince the ſon of God, our Meſſiah, our ſaviour.

The bleſſed evangeliſt [z] affirmeth, whoſoever ſhall humble himſelfe, as this little childe; the ſame is the greateſt in the kingdome of heaven. Which is an eminent inſtruction for humility, and a ſure preferrement to the kingdome of heaven: whatſoever falles out, as to the kingdomes of this world.

The like inſtruction of the ſame evangeliſt, is often ſeconded in other places [a] of ſcripture. Whoſoever ſhall exalt himſelfe, ſhall be abaſed: and he that ſhall humble himſelfe, ſhall be exalted.

The wiſdome of our law is excellent, in the antient formes and precedents of our writs and legall inſtruments, to take the affections of the people; and to expreſſe an humility in the ſupreame magiſtrate: much different from the later invention of our countrey

[z] Matt. xviii. 4. [a] Matt. xxiii. 12. Lu. xiv. 11. and xviii. 14. Pro. xxix. 23. and xv. 33.

clerkes who write in a more magiſteriall ſtile, in the warrants of inferidur officers. Theſe are to will and require you: and theſe are in his majeſtye's name ſtraightly to charge and commaund you. When his majeſty himſelfe, in his own name writes, to the ſherife of Buckes greeting. Butt the reaſon is obvious. Many an inferior officer, is a greater man in his own conceipt, than a meeke and humble prince is in his own eſtimation. The beſt rule is: [b] learne of me, for I am meeke and low[illegible] heart; and ye ſhall find reſt to your ſouls.

[b] Matt. xi. 29.

CHAP.

CHAP. XI

Whereas by advice.

THE king before he calls his parlement, takes advice about it: according to that rule of Salluſt. [a] Conſult before you begin, and then act maturely. With which agrees Seneca; [b] be long in adviſing, ſpeedy in acting. And that of Procopius; [c] that advice ought to go before action. So doth the king take advice, before he ſummoneth his parlement. And indeed nothing is more neceſſary (as Guicchardine [d] notes) than to take advice in great affayres. For (ſaith Fabius Maximus [e]) advice gives more things to men, than men give to things. * It is the great art of governement. And he that takes it from a commonwealth, doth as it were, take the reaſon from the ſoule. [f] Doubtles thoſe things are better diſpatched, which are managed by advice; than thoſe which are ordered without it. [g] Bodin and others note, that thoſe who have abſolute power, will yett ſo ſtudy the minds of the cittizens, to preſerve their obedience, that for this cauſe they will make uſe of advice. For when ſubjects perceive affayres to be managed, either without advice, or contrary to it: they deſpiſe them, and ſlightly eſteem of them; and either fearfully, or ſlowly, obey the commaunds of their ſuperiors. This was the great diſadvantage of our britiſh aunceſtors (noted by Tacitus [h]), that they did not adviſe together, to prevent the common daunger. Which makes good that aſſertion

[a] In Catilin. Priuſquam incipias, conſulta. [b] In Proverb. Diù delibera, citò facito. [c] De bel. Vandal. lib. ii. Negotium conſilio praevenire oportet.

[d] Lib. i. hiſt. [e] Apud Livium. Magis res dant hominibus, quam homines rebus. * Ars magna eſt imperii, conſilium. [f] Cicero. lib. i. Rhetor. Melius accurantur, quae conſilio geruntur, &c. [g] De Repub. c. ii. Donat. Jonnal. in rep. Venet. [h] In vita Agricol. p. 30. b.

of St. Ambroſe [i], that counſell is given to good men; butt correction to thoſe that wander, and will take no advice. What will wiſdome avail thee, (ſaith the father) if thou denieſt counſel? If thou giveſt not liberty to him that adviſeth thee; thou ſhutteſt the fountaine, that it can neither flow to others, nor profit thyſelfe. How much more beneficiall to Pharaoh, was the advice of Joſeph, than if he had given him money, which leſſeneth by uſe; butt counſell increaſeth by it. Caſſiodore [k] concludes, that every wiſe man ſeeketh advice. And Tobit adviſeth his ſon [l], to aſke counſell of all that are wiſe; and deſpiſe not any counſel. And the ſon of Syrach affirmes [m], that the counſell of a wiſe man continueth as the fountaine of life; and ſayth, my ſon doe nothing without counſel, and thou wilt not repent when thou haſt done. In that paſſage of the wiſe man, [n] underſtanding ſhall keepe thee; the vulgar latin reads it, [o] counſell ſhall keepe thee. And where it is ſaid, [p] I wiſdome dwell with prudence; the latin is, [q] in counſel. And God himſelfe ſaith, [r] counſel is mine. And who would not drinke at that fountaine? The wiſe man is full of exhortations, to take advice. [s] He that hearkeneth unto counſell, is wiſe. Without counſell, purpoſes are diſappointed; butt in the multitude of counſellors, they are eſtabliſhed. Nehemiah [t] exhorts his people, come, and lett us take counſell togither. So doth Iſaiah [u]; take counſell, execute judgement. Many other places of ſcripture might be alleadged, pertinent to this purpoſe. Butt I forbeare it, ſuppoſing that there is little need of ſpending much time to inforce this trueth, ſo well known, and ſo clerly admitted by all.

[i] Conſilium bonis datur, correctio errantibus. [k] 6 Epiſt. 29.
[l] Tob. xviii. 19. [m] Eccleſiaſt. xxi. 34. [n] Pro. ii. 11.
[o] Conſilium cuſtodiet te. [p] Pro. viii. 12. [q] In conſilio.
[r] Pro. viii. 14. [s] Pro. xii. 15. and xv. 22. and xi. 14. and xix. 20. and xxiv. 6. [t] Neh. vi. 7. [u] Iſ. xxiv. 6.

For

For examples of making uſe of advice, we may goe as high as a precedent of God himſelfe. [w] In the beginning God created, &c. Uppon which words, the reverend primate of Armach Dr. Uſher notes, that the hebrew word [x] for God, is in the plurall number; and the word for created [y], is in the ſingular number; which the latine renders accordingly [z], and is rendred in engliſh by a circumlocution, as if it ſhould be ſaid, the three perſons one God did create. Which (ſaith he) is a proofe of the Trinity; as is alſo that text; [a] lett us make man in our image, after our likenes. And in both theſe texts appears a conſultation, about making the greateſt piece of the great worke of the creation, man.

The ingenious biſhop of Exceſter Dr. Hall ſaith [b], when all helpes and ornaments were prepared, then God decreed, and after a divine manner conſulted with himſelfe, the Father with the Son and Holy Spirit, concerning the creation of his chiefe creature man. The annotations on the Bible [c] agree heerin, and moſt of the expoſitors, that this is ſpoken after the manner of men, as by way of deliberation and advice, for a worke of great weight and moment. Butt (ſay they) beſides, the word of plurality us, may intimate the Trinity [d] diſtinctly noted. And in this place, God the father ſeemeth to ſpeake, as communicating by way of counſell, with God the ſon and God the holy ghoſt, concerning the creation of man.

Agreeable to this expoſition, are the Dutch notes on the Bible [e]: and St. Auguſtin [f] gives the riſe of it. The plurality of the Trinity (ſaith he) is rightly underſtood. Paraeus is to the ſame effect [g]; that

[w] Gen. i. 1. [x] אלהים [y] ברא [z] Dii creavit.
[a] Gen. i. 26. [b] Hall's paraphraſe on this text. [c] Publiſhed an° 1651. [d] 1 Ep. Jo. v. 7. [e] Publiſhed 1657. [f] De civitat. Dei, l. xvi. c. 6. [g] Comment. in Gen. i. 26.

the

the Father heere ſpeakes to the Son and to the Holy Ghoſt. Lett us make man after a humane manner. Theſe three adviſe togither, about the creation of man: not that we ſhould imagine any doubting to be in God the creator; butt that we ſhould have in eſteeme man the creature. God, as in conſultation ſaith, lett us make man. Now he did not ſo for the other creatures, butt concerning man he ſeems to take advice in his creation; and therby commends the eminency of man above all other creatures, and the uſe of advice and councell to men, in all their weighty actions.

To anſwear that note of the Trinity heer in counſell, we find among the attributes of God, that the prophet [h] calles him great in counſell, and mighty in worke. And among the appellations of our Saviour [i], that of counſellor is given him; which the ſeptuagint render, [k] the angell of the great councell. And of the Holy Ghoſt it is ſayd, † the ſpirit of counſell ſhall reſt uppon him. Severall other inſtances might be given purſuant to this, that counſell is attributed to God, and to all the perſons in the Trinity. And by the word it is left as an example, and praecept for men to follow; by which they may obteine good, and imitate their wiſe omnipotent creator, according to that of Plato [l]. Imitate me, in the power I putt forth in your creation.

The all wiſe God omnipotent, who can doe whatſoever pleaſeth him, acting according to the counſell of his own determinate will; who hath no need of any helper, nor is any eſſence capable to adviſe him: yett for inſtruction and example to his people, he is pleaſed to condiſcend to our underſtandings, and to expreſſe his pleaſure ſo, as if he ſeemed in this great worke of the creation of man, to take

[h] Jer. xxxii. 19. [i] Iſa. ix. 6. [k] Μεγαλῆς βυλῆς ἄγγελος.
† Iſa. xi. 2. [l] Vim meam, quam in veſtro ortu adhibui, imitamini.

advice,

advice, and to consulte about it. How carefull then should men be, to follow this best of patternes, to imitate this unerring example; that in our greatest affayres, the wisest of men neglect not the assistance and advice of others: wherby we shall receive much satisfaction, in the performance of our dutyes; and so may hope for the better succes in our indeavours.

As God himselfe hath given us the rule and example of taking advice in our affayres: so is the same generally implanted by nature, and reason, in the hearts of all understanding men. And it will not be denyed, butt that in all times and in all nations, it hath bin the universal opinion and practise, to make use of counsell and advice from others.

Thus we see, that advice and counsell is a sacred thing. The heathen [m] could assert so much, where he saith, consultation truely is a sacred thing; and the poet [n] confirmes this.

> Right counsell is the safest guide
> Where wisdome dwells never deny'd.
> Accept it early, thou wilt find,
> 'Tis sacred in a prudent mind.

In the sacred story, in all times and countryes, and among all sorts of people, examples occurre of making use of advice and counsell. We read of advice taken by the people under Nimrod. [o] Goe to, lett us make bricke, &c. And of the princes [p] of Pharaoh, whom expositors affirme, to have bin those whose advice he tooke in his af-

[m] Plato ad Pers. [n] Menander. Βελῆς γαρ ὀρθῆς ἄλλο ἀσφαλέστερον. Βυλὴν πάντος πράγματος προλάμβανε, ἱερον ἀληθῶς ἐστὶν ἡ συμβελία. [o] Gen. xi. 4.
[p] Gen. xii. 15.

fayres. And Abimelech [q] called his ſervants, and told them his dreame: he adviſed with them, in that matter. And the like in many other places [r] of Moſes's ſtory. Ephron the Hittite adviſed with the people [s], about the contract between him and Abraham. The like was done by Hamor and Shechem [t], in the matter of Dinah. The like is held of Laban [u], when he gathered togither all the men of the place; that it was to adviſe with them, about the marryage of his daughter. [w] Moſes is commaunded to gather the elders of Iſrael togither, in Aegipt; and Grotius ſaith, [x] they were the counſellors. No man had greater experience than Moſes, of the good of counſell and advice; perticularly of that [y] which his father-in-law Jethro gave him: and he declares his being ſencible of the evill of the want of it, where he complains [z], that he is not able to beare the burden of the people alone. And God was pleaſed to give him adviſors, and aſſiſtants, by inſtituting the public ſanhedrim.

We find mention [a] of the princes of Iſrael, heads of the houſes of their fathers, who were counſellors of the nation. And [b] of the elders of Moab, and of Midian, counſellors in thoſe nations.

Severall counſells, and taking of advice are mentioned [c], of the princes, of the chiefe of the fathers, of the heads of the tribes, of the elders, and of the heads of the people, in the time of Moſes; who was a wiſe man, indued with the ſpirit of God: and yett held it no derogation to him, to make uſe of the advice of others. The

[q] Gen. xx. 8. [r] Gen. xl. 2. and xli. 10. and xxxvii. and xxxviii. and xlv. 16. and l. 7. [s] Gen. xxiii. [t] Gen. xxxiv. 21. [u] Gen. xxix. 22. [w] Exod. iii. 16. [x] Praeerant conſilio. [y] Exod. xviii. [z] Num. xi. [a] Num. vii. 2. [b] Num. xxii.

[c] Num. xxvii. 2. and xxx. 1. and xxxvi. 1. Deut. v. 23. and xix. 17. and xxxiii. 5.

like

like conſtant uſe of advice, was made by his ſucceſſor in wiſdome and ſpirituall guifts, as well as in the governement, that ſucceſsfull and renowned prince Joſhua [d]. As in the league with the Gibeonites; in the caſe of the daughters of Zelophahad; att the ſetting up of the tabernacle, and other occaſions.

We find likewiſe mention [e] of the princes and elders of Succoth, and of [f] the elders of Gilead, who were their counſellors; and the like in divers other places. [g] The levite relating his ſtory to the congregation, concludes; give heer your advice and counſell.

[h] The elders of Iſrael come to adviſe Samuel; and the people adviſe, to the reſcue of Jonathan. We reade † of the princes of the Philiſtins, and of the men of Judah, of whom advice was taken.

The moſt wiſe king Solomon [i], yett thought fitt to take advice of the elders of Iſrael, of the heads of the tribes, and of the chiefe of the fathers. And it had bin well for his ſon Rehoboam [k], if he had followed the advice of his father's counſellors, the old men. [l] Benhadad takes advice of his counſellors, in a caſe of much difficulty. The elders ſate with ‡ Eliſha; and are called to adviſe with

[d] Joſ. ix. 15. and xvii. 4. and xviii. 1. and xxii. 12. and xxiii. 2. and xxiv. 1. [e] Jud. viii. 14. [f] Jud. xi. 5. [g] Jud. xx. 7. [h] 1 Sam. viii. 4. and x. 17. and xiv. 45. and xxix. 4. † 1 Sam. xxix. 4. 2 Sam. ii. 4. and v. 1. and xvii. 4. [i] 1 Kings, viii. 1. 2 Chron. v. 2. [k] 1 Kings, xii. 6—8. [l] 2 Kings, vi. 8. ‡ 2 Kings, xxiii. 1. The manuſcript in this place reads, *Jeremiah*: which I have corrected *Eliſha* upon the authority of the marginal reference to the text where this latter is named. The name of *Joſiah* is alſo inſerted after *king*, to complete the ſenſe. (M)

king Josiah. [m] David adviseth with the captains and leaders, and with the princes, captains, stewards, officers, &c. [n] King Hezekiah, tooke advice of the princes, and congregation; and so did all the best, and wisest of their kings. We reade in Ezra [o], of taking advice; and in the times of all their kings and governors, the wisest and ablest of them, who constantly made use of counsell.

In the time of their captivity under the Babilonians, they had their counsells. And likewise under the Romans, as is evident in many places of the new testament [p], in very many places. Which whoso desires a larger satisfaction on this matter, may easily find it by perusall of that sacred word, which in the study of it, affordes more true wisdome, satisfaction, and true and incomparable pleasure to a mind desiring trueth and spirituall wisdome, than can possibly any where else be gained.

Nor is there scarcity of humane examples, for the continuall and universall making use of advice, and councell, in all great occasions; especially by all civilized nations. It is true, that Tacitus [q] layes it as a blemish upon our british aunceStors, as hath bin before noted. [r] They did not use to consult togither in common; seldome had they councells, for resisting the common daunger; so that whilest they

[m] 1 Chron. xi. 1, 3. and xiii. 2. and xxviii. 1. and xxix. 1, 6. [n] 2 Chron. xxx. 2. and xxxi. 8. [o] Ezra, i. 5. [p] Mat. ii. 4. and xxvii. 1. Mar. xv. 1. Lu. v. 17, 26. and xxii. 66. Jo. xviii. 28, 33. Acts, v. 5, 20, 27, 34. and vi. 12. and vii. 2. and xv. 2, 4, 6, 13, 19, 22. and xvii. 15. and xix. 32, 39. and xx. 17. and xxi. 14. and xxiii. 35. and xxiv. 1, 10. and xxv. 6, 11, 12, 16, 23. and xxvi. 1, 10. 1 Cor. v. 4. 1 Tim. v. 17. Tit. i. 1. 1 Pet. v. 1. Rev. iv. 4. and v. 11, 12. and xxi. 24. [q] In vit. Agric. p. 306. [r] Quod in commune non consulunt, rarus ad propulsandum commune periculum conventus; ita dum singuli pugnant, universi vincuntur.

ſeverally fight, they are univerſally overcome. Yett our hiſtories relate, both in their's, and in the time of the Saxons, Normans, and ſince, a conſtant frequent making uſe of advice, and counſell. So that Coke[s] reckons, ſince the time of H. 1. downwards, 280 ſeſſions of our parlements.

[t] The graecian commonwealths had their conſtant uſe of advice, in all matters of importance, either for peace or warre; the which they never undertooke, without firſt taking advice uppon it.

The Romans did the ſame: and thoſe princes among them, who exerciſed the moſt abſolute power, would yett take advice of others. Romulus commaunded according to his will; butt held it wiſdome to take advice, and therfore inſtituted a counſell. [u] Caeſar communicated his affayres to the chiefe, and ſometimes to the ſenate. [w] The like was done by Auguſtus, Tiberius, and all their wiſe princes.

[x] The French, Spaniards, Italians, Germans, Polles, Swedes, Danes, and what nation can be reckoned, butt have conſtantly made uſe of counſell, and advice; which to name perticularly, would make too great a volume.

[s] Coke com. on Litt. f. 110. a. [t] Gothofredus, e. Athens, &c. Treaſury of antient and moderne times, p. 86. &c. [u] Tacitus, lib. iii. Annal.
[w] Dion. lib. xliii. et liii. [x] Lib. de rep. Hiſp. et Gothofred. Hiſp. &c.

CHAP. XII

And assent.

THE king is pleased not only to have the advice, butt the assent likewise of his counsell, about this weighty buisnes: and this course of his proceeding to publish by his writ, to all his people; that therby they may take notice of his great care of their wellfare, and of his making use of advice, and concurrence of judgement, in his greatest actions and wherin they are most concerned.

The orator [a] saith truely; he that takes away sight or assent, takes away all action out of this life.

The kings of England are not of the judgement of the persian king, who spake to his councell in this manner.

[b] Least I should seeme only to make use of my owne judgement, I have assembled you: butt remember, that it is your part rather to obey, than to persuade. He affords little roome for advice, lesse for assent; when he admitts them not persuasion, butt requires obedience. Our kings proceed in a much wiser course, taking not only the advice, but the assent of their councell in their great affayres. Thus truely is [c] counsell derived from the meeting, and result of many † reasons into one sence, and assent of judgement; which

[a] Cicero. 4 Acad. Qui aut visum aut assensum tollit, is omnem actionem tollit é vita.

[b] Ne viderer meo tantummodo usus consilio, vos contraxi; caeterum mementote vobis magis parendum esse, quam suadendum. [c] Consilium, à con et salio. Lindwood, f. 10. dorſ. † Doth not the sense require, that we read *persons*, in this place? (M)

commonly

commonly proveth most effectuall, and carryeth the greatest force and authoritie along with it. Not that the king is bound up by the judgement of this his councell, lesse than by the judgement of his great counsell: of the last of which held under king Charles I[d]. att Yorke, it was resolved by the lords in parlement, that the king att his great councell may follow the advice of one peere, contrary to all the rest if he please. So he may in this councell if he thinkes fitt: butt usually he takes their assent, to give the greater satisfaction to his people; and to cause the better reception of that which by their assent is so declared.

Yett it may be noted, that it is no rare thing for some counsellors, to be inclinable to assent to the opinion of their princes: especially if they are of the judgement of those whom Martiall thus describes:

> [e] Thy lyes I do believe, and when thou dost
> Repeat bad verses, I commend them most.
> When thou dost sing, I sing; and alwayes when
> Pontilian, thou dost drinke, I drinke agen.

They can be like Ben. Johnson's Mercury; a saus'd Mercury, or a salted Mercury, or a dryed Mercury, or a pouldered Mercury, or whatsoever their lord will have them to be. Or like his Mosca[f], who cryes out in admiration of parasites; I muse the mistery was not made a science, it is so liberally profest. Almost all the wise world is little else in nature, butt parasites, or sub-parasites: such as assent to whatsoever their masters propose, and those again who com-

[d] 16 Car. I.

[e] Mentiris, credo; recitas mala carmina, laudo;
Cantas, canto; bibis, Pontiliane, bibo.

[f] Volpone.

mend

mend the assenters. Butt such men as are given to flattery, as will assent to whatsoever they thinke will please their prince, Seneca [g] censures to be of a broken faith: and the wise man saith [h] a flattering mouth worketh ruine. Those counsellors are to be regarded, who with a duetifull and civill freedome speake their minds, and judgments, to their prince: assenting to his opinion, or dissenting from it, as their reason and judgement leades them. And such a counsellor will att last, find more favour [i], than he that flattereth with the tounge; for such men a wise prince will avoyd, according to that advice [k]. Meddle not with him that flattereth with his lippes.

The calling of a parlement is a weighty matter, and to be done uppon great deliberation; not hastily, or unadvisedly; butt with the advice, and also with the assent of councell: as we see appears by this very forme of our antient writ of summons, which recites the resolution to hold a parlement, to be by advice and assent.

[g] Epist. xxi. [h] Pro. xxvi. 28. [i] Pro. xxviii. 23.
[k] Pro. xx. 19.

CHAP.

CHAP. XIII

Of our.

THE note uppon this word, is only as to the plurall number, the conſtant manner of expreſſion in the king's name; as we commaund, not I command; and our councell, our parlement, our kingdome, and the like: the which is uſed from a ſingularity, or ſpeciall forme belonging unto greatnes.

The perſian and greek emperours, as other princes in the more antient times, often uſed the ſingular, as well as the plurall number: butt in the later age it is otherwiſe, and the plurall number uſed, both in expreſſions to them, and from them.

Thus it is frequent in the holy tongue. For an inferior to ſpeake to a great man in the plurall number, is honorable in the toungs (ſaith our hebrew doctor [a]) of Europe; ſo in the arabick, for a king or great man to ſpeake in the plurall number; and in the holy tounge, to ſpeake of a potentate in the plurall number. And their grammarians make it an enallage of number, when the noune is plurall and the verb ſingular; and uſed chiefly to expreſſe excellency, in the perſon to whom it is referred. In Spayne, it is proper only to the king himſelfe, and to his vice-royes [b]. As we Philip, &c. and we Don Inigo, vice-roy of Naples, &c. Butt in England, it hath bin uſed by perſons not ſupreame. As [c] we Margaret counteſſe of Richmond, mother of the king, &c. The like hath

[a] Aben Ezra ad Gen. i. Sanford in rudim. ling. hiſp. p. 57.

[b] Caeſar Oudin. in grammat. hiſp. p. 38.

[c] Rot. clauſ. xxi. h. 7. p[t] 21 et 2. dorſ.

alſo

alſo bin uſed [d] by earles, and ſometimes in the inſtruments of biſhops, archdeacons, and their inferiours.

A german lawyer [e] ſaith, that in the appellations of dukes, princes, counſellors, and doctors, the plurall number is to be uſed. So it is in our writs of ſummons to the peeres, officers, judges, and king's ſergeants to the parlement; and in the writs of call of ſergeants [f]. Butt in a writ to the ſheriffe, it was adjudged falſe latin, and the writ to abate.

[d] Tit. hon. Seld. p[t] 2. p. 121. [e] Joſias Nolden de ſtat. nobil. civil. c. v. §. 1. [f] 6 E. 6. Dyer. f. 72. 29 E. 3. f. 44.

CHAP.

CHAP. XIV

Councell.

WHAT councell the king adviſeth with for ſummoning of his parlement, is in his own pleaſure. Though for the moſt part it is to be preſumed, that he adviſeth with his privy councell, or his councell of ſtate; and ſometimes with his great councell, or councell of peeres, who have frequently given their advice for the ſummoning of parlements.

It is the liberty of every engliſhman, to make uſe of councell in all his affayres. And therfore there is a profeſſion and ranke of men, who are called counſellors at law, whom any may reteine by an honorary gratuity or fee, to adviſe them in matters of lawe, for ſetling of their eſtates; and for aſſiſting them, and pleading for them in their law ſuits, for their better defence or procurement of their right. Theſe have the priviledge of pleading, and adviſing for their client, even againſt the legall intereſt of the prince himſelfe, or of any great man: laying ſtill the foundation uppon the law, which is the people's bulwarke. Such was the beginning of that mutual relation and affection, between the patrons and the clients in Rome: the clients having protection, and aſſiſtance, from the patrons in their ſuits [a]; and the patrons had aſſiſtance from their clients, in their attendance, in their purſes, and ſuffrages uppon all occaſions.

Every private perſon hath alſo the freedom of adviſing with what perticular friends he pleaſeth, about his own affayres: like unto

[a] Lazius de repub. rom. p. 12.

that of the pſalmiſt [b], we tooke ſweet counſell togither, and walked unto the houſe of God in company.

In like manner the king hath his own pleaſure, to adviſe with what perticular friends or perſons he thinkes fitt, about his own affayres. As Plutarch relates of Scipio Africanus, that he conſulted in all his affayres with Caius Laelius: and Cicero confeſſeth, that in his conſulſhip, he did nothing without the philoſopher Publius Nigidius.

Butt to ſpeake of bodies of councells framed; the kings of England have had ſeverall ſuch councells, for the preparation and management of their affayres, and for the better governement of their ſubjects.

[c] They had their provinciall councells; as ſometimes in Scotland, chiefly in the time of E. 1. Conſtantly they had ſuch councells in Ireland [d], and as antient as the time of E. 3. And this, all our annales teſtify.

They had the like in France; as appears in our hiſtories, and in the rolles of France and of Gaſcoigne yett in the tower of London. As that mention [e] which is made of Bernard Argentine, counſellor to the king in Aquitaine. The king had likewiſe his provinciall councell in the marches of Wales, wherof my honoured father was chiefe juſtice; and the councell in the north; both which in our remembrance, were taken away by [f] act of parlement.

[b] Pſal. lv. 14.

[c] 33 E. 1. Rot. clauſ. m. 13. Sched. et memorand. E. 1. de ſtatu regn. Scot. Rot. Vaſcon. m. 7.

[d] 1 E. 3. Rot. clauſ. m. 16. p[t] 1.

[e] 33 H. 6.

[f] Stat. 17. Car. 1.

He

He had alſo when the times required it, his councell of warre; and ſometimes a councell of trade, and another for foreign plantations, as his majeſty hath att preſent appointed. Butt the ſtanding and conſtant councells of the king are reckoned [g] to be four.

1. His councell for law matters, who are the judges of the lawes: as appears frequently in our law bookes, which ſpeaking generally of the councell, are to be underſtood according to the ſubject matter; as if it be legall, then of the king's councell at lawe, that is, the judges. In H. 3. time it was ſo underſtood, [h] where it is ſaid, "ordeined before the king &c. and other of the great men, and the king's councell:" which is to be underſtood the judges, which in the years of E. 3 [i]. often occurre by the name of the [k] king's councell. Accordingly we find in the booke of aſſiſes [l], the award of all the councell, in a queſtion of law. And in another place [m] it is ſaid, "by advice of all the councell, Thorpe gave judgement in a matter of law." So in H. 6. time [n] "an attachment is before the king and his councell." So in 1 R. 3. [o] it is ſaid, "by advice of all the judges, as the king's councell." And in all theſe, and many other places in our bookes of law, by the councell of the king is underſtood the judges.

2. Councell of the king is that which is called his privy councell, for matters of ſtate [p]; with whome he uſeth to ſitt in perſon,

[g] Coke on Litt. f. 110. [h] Placit. 15 H. 3. apud Weſtm. coram rege et aliis magnat. et conſilio regis. [i] Tit. hon. Seld. p. 279. [k] Conſeil du roy. [l] 43 aſſiſ. p. 15. f. 270. agard de tout le councel. [m] 19 E. 3. Brooke. judgement 179, per advice de tout le councel. [n] 27 H. 6. f. 5, 6. pl. 35. [o] 1 R. 3. f. 4. pl. 11. [p] 12 E. 3. rot. clauſ. part 2. m. 19. 39 E. 3. f. 14. 1 R. 2. rot. parl. m. 16. 8 H. 4. n. 26. 2 H. 6. rot. parl. n. 15.

and adviſe about matters of generall concernement to the kingdome; and in forein affayres, in reference to leagues and matters of trade. Many records are cited concerning them in the 4th part of the inſtitutes [p], which are not neceſſary for a repetition.

It is much in the power of this councell to doe great good, or great evill, to the king and ſtate. The evills of counſellors are ſett downe in the articles [q] againſt Hugh Spencer the father, and the ſon. 1. Not ſuffering the grandees, and good counſellors, to ſpeake with the king, butt in their hearing, and att their will. 2. Adviſing the king not to anſwear petitions, butt att their pleaſure. 3. Diſplacing good officers, and putting bad ones in their roomes; and preferring ignorant judges. 4. Counſelling the king to raiſe horſe and armes, contrary to mag. charta; and ſo would have moved war for their proper quarrell. 5. For defeating that which the king had graunted in parlement. 6. Not ſuffering the king to take reaſonable fines, uppon alienations, &c.

The like will alſo appear, in ſeverall of the articles againſt cardinal Wolſey. As in the 8. That he uſed to have forein ambaſſadours to come to him, before they came to the king. 9. And letters from bejond ſea, to be firſt brought to him. 10. And forein intelligences. 11. Wrote of his own head to forein miniſters; and firſt received, and concealed their advices. 15. Would not permit free debate at the councell board; and conſumed much time with a fair tale. 16. Tooke more buiſnes uppon him than he could diſpatch. 32. That he made debate among the nobles.

Many times, in parlement, the commons have petitioned againſt the councell's taking too much power uppon them: [r] as that no man

[p] Co. 4 Inſt. p. 53. [q] Vet. mag. chart. f. 51. part 2. [r] 25 E. 3. rot. parl. n. 15.

be

be putt to anſwear, before the councell, of his freehold, or of life, member, or fine. To that of freehold, the king agrees; and to this effect an act of parlement [s] was afterwards made. Yett in the ſame year [t], the councell make a kind of award uppon a matter of title. [u] The firſt year of R. 2. it is graunted, that no ſuit be ended before the councell, butt before the juſtices. [w] The next year, the like petition againſt anſwearing by writ before the councell, in caſes of freehold: which the king graunts, ſaving, that they ſhall anſwear for oppreſſions. In H. 4. time [x], ſeverall articles are agreed touching the king's councell: that worthy men be appointed; [y] that they doe not hold plea of any matter determinable att law; [z] that matters of councell, be diſpatched by full aſſent; and the like. Butt to mention the many petitions, and ordinances in parlement, touching the king's councell; is too vaſt an undertaking for this treatiſe. I ſhall therfore conclude with the ſtatute of H. 4. [a] reciting, that after judgement the parties are made to come before the king, and before his councell; and enacts, that it be ſo no more: and the act made by our late king and parlement, [b] that the privy councell ſhall have noe juriſdiction, nor determine any thing concerning the lands, or goods of any perſon; but the ſame ſhall be determined in the courts of law.

[c] The oath of a privy counſellor fully deſcribes his duety. 1. That he ſhall juſtly counſell the king. 2. In all things, to the king's honor, and the good of his realmes and ſubjects; without partiality, affection, love, meed, doubt or dread. 3. That he keep ſecret the king's counſell; and not diſcover it by word, writing, or otherwiſe.

[s] Stat. 42 E. 3. c. iii. [t] 42 E. 3. rot. parl. n. 27. [u] 1 R. 2. rot. parl. n. 87. [w] 2 R. 2. rot. parl. n. 49. [x] 8 H. 4. rot. parl. n. 67. [y] N. 74. [z] N. 77. [a] Stat. 4 H. 4 c. xxiii. [b] Stat. 17 Ca. 1. c. x. [c] 11 H. 4. rot. parl. n. 14.

4. That he doe nothing for guift, meed, or good, or promiſe of it. 5. That with all his power, he help the councell; for the univerſall good of the king and his land, and for the peace of the ſame. 6. That he withſtand all attempts to the contrary. 7. That he doe all that a good counſellor ought to doe.

It appears [d], that for their great pains, an allowance or ſalary might be given them from the king. All of them had votes in the ſtarre-chamber.

By the petition of right, [e] complaint is made of people's being cauſed to attend the councell, for not lending money to the king; and of charges impoſed by lord lieutenants, and deputy lieutenants by order of the king, or his councell, contrary to law: and it is enacted, that it ſhall be done no more.

They are called the privy councell, or ſecret councell, from the ſecrecy that is requiſite to be in them, as the wiſe man informeth; "[f] a tale-bearer revealeth ſecrets, butt he that is of a faithfull ſpirit concealeth the matter." Theſe counſellors are nominated by the king, and are properly his counſellors.

3. The third councell of the king is called his [g] great councell; which is ſometimes, out of parlement, applyed to the peeres of the realme the lords of parlement, who are [h] counſellors borne; and under the name of the great councell they have bin often ſummoned. As in H. 4[i]. time, an exchange being made between the king and the earle of Northumberland; the king promiſeth to deli-

[d] 9 H. 6. rot. parl. n. 25.
[e] 3 Car. 1.
[f] Pro. xi. 13.
[g] Magnum concilium.
[h] Conſiliarii nati.
[i] 5 H. 4. 27. Aug. re.

ver

ver to the earle, lands to the value, &c. by advice of the parlement, if they meet before ſuch a day; otherwiſe, by advice of his great councell. There is alſo mention of this councell in E. 3. time, [k] in many records in the tower of London: and in [l] other king's reigns, the name of great councell doth frequently occurre. And it is not doubted, butt that the king may whenſoever he pleaſeth, aſſemble his great councell of peers, to have their advice; and that the ſame hath bin frequently the practiſe of our kings. Butt theſe councells, eſpecially of later times, have not taken uppon them any other than a conſultative power; nor to impoſe by their authoritie, any new lawes, or any burdens upon the people. The laſt great councell yett in memory was held att Yorke, by our late king Charles; and the king's power therin agreed, as hath bin before remembred.

4. Councell of the king, which is alſo the ſupreame couucell of the kingdome, is the parlement, called in this and other writts, and in judiciall proceedings, [m] the common councell of the realme. And it is often called † by the name of the councell in our parlement rolles, and other records, printed ſtatutes, law-bookes, and annales: wherof many might be cited, if it were needfull in this place. Butt I ſhall rather content myſelfe with a ſhort mention only of this generall, and ſupreame councell the parlement, and one of the councells of the king, and kingdome. Butt the perticular deſcription therof, and of the name, parts, conſtitution, power, and priviledge therof, (being the great ſcope of the intended treatiſe) is referred unto the

[k] Stat. 37 E. 3. c. xv. 27 E. 3. rot. parl. n. 1. [l] 1 R. 2. rot. parl. n. 5. 5 R. 2. rot. parl. n. 3. 10 R. 2. rot. parl. n. 1. [m] Commune concilium.

† Bracton, lib. i. c. 2. *Regiſt.* f. 280. 45 E. 3. rot. parl. n. 10. 50 E. 3. n. 132. et 151. 1 R. 2. n. 68 et 110. Stat. Bigamy. 4 E. 1. 7 E. 1. Stat. Mortm. 13 E. 1. Acton. Burnel, 13 E. 1. c. 1. Stat. Vouchers. 20 E. 1. Waſt. 9 E. 2. Art. Cleri. 1 E. 3. c. i.

proper and perticular places, for which the ſame are ſeverally and perticularly deſigned.

And this courſe of ſeverall councells hath bin generall, by all princes and ſtates, in all times practiſed.

The Jewes ſeem to have had their diſtinct councells: and reaſon leadeth princes to adviſe with perſons fitt, and proper, and experienced in the matters to be adviſed on. As David adviſed with [n] the captains and leaders, that is, as well the civill, as the military officers; and his ſon king Solomon had his ſeverall counſellors. His ſon Rehoboam had his privy councell of young men [o], which adviſed him accordingly. [p] King Hezekiah adviſed with his princes, who were as his great councell; and ſo had Joſhuah done [q], in making the league with the Gibeonites. And very many texts are obvious, ſhewing the diſtinct councells, and ſeverall uſe of them, unto the ſupreame, generall, common councell of the nation, to which our parlement not improperly, may in ſome parts have a reſemblance noted. Butt therof occaſion is intended to be taken to be perticular, in other places.

[r] The Graecians had many ſeverall, and diſtinct councells: as in the firſt place the councell of the Areopagitae, wherof we find a mention in the acts of the apoſtles [s], whither Paul was brought; and the marginall note ſaith, this was the higheſt court in Athens. [t] They had likewiſe their councell of Nomothetes; and their Nomophylaci; and the councell of the Pritanii; the Zeteti; and ſeverall others.

[n] 1 Chron. xi. 1. et xiii. 11. et xxviii. 1.
[o] 1 Kings, xii. 8.
[p] 2 Chron. xxx. 2.
[q] Joſ. ix. 15.
[r] Ariſt. in Rhet. Quinctilian. Treaſury of times, f. 100.
[s] Acts, xvii. 19.
[t] Budaeus in Demoſth. orat. iii. Cicero lib. iii. de leg. et in 1. orat.

And

And from the Athenians the [u] Romans are ſaid to have taken the patterne of their governement: and of their ſeverall councells their authors make frequent mention. Alſo that of the Venetian's ſeverall councells, is compared to thoſe of the Athenians [w]; and in their authors appeare to be of notable wiſdome, and rationall inſtitution.

The French after the three eſtates were diſſolved, yett made uſe of the ſeverall parlements, and other diſtinct councells: and the members of them att this day, retaine the name of counſellors.

[x] The french king hath his privy councell, which they call the ſecret councell, and the ſtraight councell: and they were choſen of the officers, princes, and great lords of France, according to the favour of their maſter. The ſame author alſo mentions the great councell of the king, conſiſting of the great lords, [y] the peers of France, and thoſe of his parlement. He hath alſo a ſeverall councell for military affayres. And in former times, they had their ſupream councell of the three eſtates.

[z] The king of Spayne hath his ſeverall, and diſtinct councells: one of warre, another for ſea affayres, another for the Indies, others for ſeverall provinces, and one generall councell for ſtate matters, and the councell called the chiefe councell or [a] higheſt councell of Spayne. And the Portugalls had alſo their ſupream councell, called [b] the moſt high councell. And the † Arragonians had one, both in conſtitu-

[u] Gothofredus, c. de Rom. [w] Treaſury of times, c. of the Athenians.
[x] Paſquier Recherches, p. 77. Conſeil ſecret, et conſeil eſtroiet. [y] Les pairs de France et les ſieurs de ſon parlement. [z] Lib. reipub. Hiſp. et Gothofredus de Hiſp. [a] Concilium ſummum Hiſpaniae. [b] Altiſſimum concilium. † Guevara, lib. i. f. 15. b. Alvarez Valaſco. Origin. Luſitan. cap. 100. Reſp. Hiſp. f. 122.

tion, and authority not unlike to our parlements; which time, and power hath changed.

In Denmarke, Poland, Ruſſia, and all thoſe other parts of the world, the princes and ſtates have their ſeverall, and diſtinct councells.

[c] The emperor of Germany hath his ſecret councell, choſen by him out of his court councell, with which this author was much offended; ſtiling it [d] monſtrous, horrid, without forme, huge, without law or manners, intruded on them.

He hath beſides, the councell of the electors, and other princes, his great councell; and beſides his councells of warre, and for ſeverall provinces, the ſupreame councell not unlike our parlement, the dyette.

Butt ſence and reaſon hath ledde all people, to the uſe of ſeverall councells. I ſhall not therfore need to be more perticular heerin: butt in regard of the excellent methode, and the eaſe it gives their king, I ſhall ſett downe the formes of the ſwediſh councells.

1. Councell they call the colledge of juſtice, the preſident wherof is the chiefe juſtice of Sweden, much like the antient chiefe juſtice of England, with four or five ſenators and a few others joyned with him, as his aſſeſſors. Their buiſnes is to overſee the adminiſtration of juſtice, to receive the laſt legall appeals, to ſee, that right be done to all according to law, and that the courſe of juſtice have its due current. And the chiefe juſtice is the firſt rick's officer, that is

[c] Lib. de ratione ſtatus, p. 392. Concilium ſanctius et ſecretius. Der Reherljche geheime Raht. [d] Monſtrum, horrendum informe ingens, ſine legibus, &c.

the kingdome's officer, called by them ricks drutſet, that is the kingdome's doer of right. And this councell they call the hoff-ratt, the ſupreame judicatory, for cauſes ſubject to the cogniſance of the king, whence it is called [e] regium judicium, the king's judgement; and is in place of an antient judicatorie which they called the king's bench, or the [f] named judges of the king, in which (as in our king's bench) the king himſelfe uſed to ſitt; and from thence there was no appeale. In criminall cauſes, and treaſons, heer is the laſt provocation; and from judgements in inferiour judicatories, uppon a ſum of money firſt depoſited by the appellant.

2. Councell they call the colledge of warre, in which the rick's marſhall or feldt here, that is the lord of the field or generall of the army, is preſident, with ſome of the ſenators and others his aſſociates military men; with the generall of the watches and armes, and their under officers attending.

To this councell belongs the inſpection of all the militia, of the marching and ſtanding forces throughout the kingdome, and of all matters belonging to the warre, men, ammunition, armes, muſters, wages, proviſions, and other matters belonging to the warre, the campe and fortifications. To this councell is the laſt appeale in all matters touching the ſoldiery.

3. Councell they call the colledge of the admiralty, where the ricks-admirall is preſident, with aſſeſſors of the ſenators and others experienced in navall affayres. To them belongs the care of all the ſhippes of warre, either in a fleet or ſeperate, to have an account of all ſhippes great and ſmalle, to take care for building, furniſhing,

[e] Loccennius. [f] Tribunal regium konungs namd.

repayring, and rigging of them: and for armes, ammunition, proviſion, and all things neceſſary for the navy, they adviſe, and give the king, an account therof. And they determine all differences among the ſeamen, by way of appeal from the inferiour officers, in matters relating to the navy.

4. Councell is the colledge of the chancery, wherof the ricks chancellor is the preſident, with aſſeſſors, the chancellor of the king's court and two ſecretaries of ſtate, of the nobility. To this councell have relation all the ſecretaries, in the nature of maſters of the chancery; one for domeſtick or ſwediſh affayres, another for the affayres of Finland and Livonia, another for Germany and communications with forein princes, another for conſultations, another for reviſions, others as referendaries to peruſe proceedings of inferiour courts, and to ſtate the matter uppon a review for the judgement of the king, or his delegates. Hence iſſues the legall ordinary proces: decrees, ſtatutes and ordinances are heer drawne and prepared, priviledges and inſtructions ſigned, pacifications, leagues, ambaſſies, inſtructions, and commiſſions for all forein publick miniſters, are heere framed, confirmed, ſealed and recorded; and heer are all conſultations touching forein negotiations, of which matters the chancellor hath the ſpeciall care and overſight, and ſo it was antiently with the chancellor of England. Heer are alſo framed, ſealed and inrolled, all grants, priviledges, patents, creations and commiſſions.

5. Councell is the colledge of the treaſury, where the preſident is the rick's ſchatz-miſter, or treaſurer, with his aſſeſſors. And they take care of the whole buiſnes of the revenew, the collecting and bringing of it in, and the diſburſing of it according to the king's warrant. Under their inſpection are all officers of the revenue, and

of

of the mints; and they determine differences about the king's boores, and tenants.

6. Councell, lately added, is the colledge of trade, with a preſident and aſſeſſors; whoſe buiſnes is to advance the commerce of the kingdome, and therin to adviſe the king. Who hath this eaſe and benefit by theſe councells, that when any petition is preſented to him, he referres it to that colledge which hath the cogniſance of the matters therin conteyned, who commonly determine the ſame; or ſo examine and prepare it for the king, that he hath little trouble to anſwear it.

There is alſo the heredagh, in nature of our great councell; and laſtly, the ricksdagh, of no ſmalle reſemblance to our parlement.

CHAP.

CHAP. XV

For ſome great and weighty affayres.

THE writt declares the occaſion of ſummoning the parlement, [a] for great and weighty affayres; difficulte and preſſing, of a generall concernement, and of an high conſequence, and therfore fitt for the advice of a publique councell: that where all are concerned, all may be conſulted, and give a generall determination. One [b] deſcribing our parlement ſaith, that the kings uſed to call them, as often as it was needfull to conſult about the great and weighty affayres; that the commonwealth might receive no prejudice. My lord Elleſmere [c] agrees heerin; that when the king ſees great and urgent occaſions, he uſeth to call his parlement. And the very frame of the writ doth ſufficiently teſtify it, and therin, the wiſdome of the king, and his privy councell, not to take uppon themſelves the reſolution of thoſe great and weighty affayres, without the common advice and aſſent of the nobles, and of the people's deputies; whoſe aſſiſtance, both in advice and authority, they require and eſteem neceſſary, in matters of this nature.

And heerin they follow that great example of wiſe governement, that excellent patterne Moſes; whoſe power and authority over the Iſraelites was abſolute, and ſupreame, by the appointment of God who was pleaſed alſo to inable him for the execution therof. 1. In religious matters [d]; the iſraelitiſh woman's ſon that blaſphemed, being brought to him, he cauſed to be putt in ward, inquires of God, and

[a] Pro quibuſdam arduis et urgentibus negotiis. [b] Coke, Epiſt. 9 Rep. Quoties de rebus arduis, ne quid detrimenti capiat, conſultandum. [c] Caſe of the poſtnati, f. 110. [d] Levit. xxiv. 11, 12, 13, 14, 15.

declares

declares his mind, and the blasphemer was stoned to death; and that punishment enacted as a law against blasphemers. [e] He from God also, gave the commaund touching uncleane persons to be putt out of the campe [f]; and about the keeping of the passover, [g] which was by him declared in the institution of it in Aegipt. † Also the law of idolatry, and that of the sabaoth, and of the tabernacle, the offerings, sacrifices, ceremonies, altars, and the like: the law was from God, delivered to the people by Moses. [h] He likewise punished the idolatry to the molten calfe, burnt it, cast the powder of it uppon the water; and made the children of Israel to drinke of it, and 3000 of them to be slaine by their brethren. 2. His power in civill matters, appears in the lawes promulgated by him in his bookes of Exodus, Leviticus, Numbers; and in [i] his sitting to judge the people: and when he had constituted judges under him, by the advice of his father in law Jethroe, yett the hard causes were resolved by him. 3. His power in military matters, appears [k] where he directs the people to incampe before Pihahiroth; and where he incourageth the people. "Feare not, stand still, and see the salvation of the Lord;" and where he commaunds Joshua, "[l] chuse us out men, and goe and "fight with Amalek;" and [m] where he appoints the incamping of the several tribes, the number of warriours, order of marching, of alarums, &c.

Notwithstanding this power, and ability given to him from God; yett Moses growes weary of this power, and with more than ordinary earnestnes, intreats of the Lord [n] to give him assistance; he not

[e] Ibid. et Num. v. 2. [f] Num. ix. 6. [g] Exod. xii. 3.
† Exod. xxii. 20. and xxiii. 13, &c. and xx. and xxiii. 12. and xxxi. 12. and xxxv. 2. Exod. xx, xxi, xxii, xxiii, &c. [h] Exod. xxxii. 19, 20, 26, 27, 28.
[i] Exod. xviii. 13, 16. [k] Exod. xiv. 2, 13. [l] Exod. xvii. 9, 10.
[m] Num. c. ii. &c. i. ver. 10. [n] Num. c. xi.

being

being able (as he complains) to beare the burden of the people alone. If Moſes were not ſufficient for theſe things, who is? God was pleaſed to give him aſſiſtants, and to inſtitute the great ſanhedrim to be his counſellors: and uppon his deſire, they are added to him in the governement; which being before in Moſes ſolely, is now (ſaith Menochius) mixed with ariſtocracy, by their adjunction in governement, in the moſt weighty matters.

[o] Schiccardus agrees heerin, that it became by the addition of this councel, not abſolutely monarchicall, butt mixt with ariſtocracy.

[p] Bertram holds they were inſtituted for the eaſe of Moſes in his governement; and ſeem to have had cogniſance in the greater matters. And (ſaith Menochius [q]) this colledge of 70 men ſeemes to have bin almoſt equal in power with Moſes, and to have cogniſance of the greater cauſes; elſe Moſes had felt no eaſe of his great burden. Butt Schiccardus [r] affirmes of their great ſenate, that they had cogniſance chiefly [s] of the great matters, as our parlement hath. And this example of Moſes was imitated not only by our kings, † butt univerſally by all nations, who in the great and weighty affayres of the commonwealth, conſulted with their generall and publique councells. Ariſtotle ſaith heerof; [t] we take councell of things wherof

[o] P. 92. Non abſolute monarchicus, ſed cum ariſtocratico mixtus.

[p] Bertram, de rep. judaic. p. 63. [q] De repub. Hebraeor. lib. i. col. 3.

[r] Jus reg. Hebraeor. p. 9. [s] Maimon. c. v. p. 7. de rebus magnis.

† Οἱ γὰρ βασιλεῖς ἃ προέλοιντο ἀνέγγελον τῷ δήμῳ. Homer. [t] De mor. lib. iii. p. 39. There ſeems to be ſome omiſſion in this place. The paſſage quoted is, in the fifth chapter of the 3d book, which treats of matters concerning which we adviſe, and of advice or council; alſo concerning matters of election or choice; and that choice is a rational or adviſed appetite of things relating to ourſelves. The cauſes recited by Mr. Whitelock,

wherof there be no other cauſes but nature, neceſſity, and fortune. And that in great matters we uſe counſellors, diſtruſting ourſelves as unable ſolely to ſuffice, to diſcerne, then are the publique councells to beare part of the burden, nor is it any diſparagement to the wiſeſt princes in ſuch matters to make uſe of councells, as Moſes did, and the philoſopher adviſeth ſuch councells to judge according to rules, and lawes, which will be found much better both for prince and people, then any arbitrary proceedings. The ſenate inſtituted by Solon, is ſaid [u] to have power of all things which were of great moment; and the like of the roman [w] ſenate; and the perticulars, and matters of great and weighty concernement in their power, are recited.

So it is related by Tacitus [x], that of the greater matters all did conſulte (that is their publique councells) in Germany: and that

Whitelock, are out of our power, and mentioned by Ariſtotle as matters on which men do not adviſe. The text of Ariſtotle warrants our reading it as follows:

" We adviſe or deliberate concerning things relating to ourſelves, and wrought by us.——Cauſes *(efficient)* ſeem to be, nature, neceſſity, and luck; alſo reaſon, and whatſoever is performed by man: and amongſt men, each adviſes concerning what is wrought by himſelf.——Council is in things which, for the moſt part, happen, and are not manifeſt how they will terminate; and alſo in matters undefined. Therefore in great affairs we take *united* counſel, not truſting to ourſelves, as not being ſufficient to diſtinguiſh therein." Βελευόμεθα δὲ περὶ τῶν ἐφ' ἡμῖν πρακτῶν——Αἴτια δοκοῦσιν εἶναι, φύσις καὶ ἀνάγκη, καὶ τύχη, ἔτι δὲ νῦς καὶ πᾶν τὸ δι' ἀνθρώπου. Τῶν δ' ἀνθρώπων ἕκαστοι βουλεύονται περὶ τῶν δι' αὐτῶν πρακτῶν.——Τὸ βουλεύεσθαι δὲ ἐν τοῖς ὡς ἐπιπολὺ, ἀδήλοις δὲ πῶς ἀπο βήσηται, καὶ ἐν οἷς ἀδιόριστον. " συμβούλους δὲ παραλαμβανόμεν εἰς τὰ μεγάλα, ἀπιστοῦντες ἡμῖν αὐτοῖς ὡς οὐκ ἱκανοῖς διαγνῶναι." (M)

[u] Gothofred. lib. ii. p. 699.——Majoris momenti. [w] Roſinus, de antiquit. Rom. p. 280. [x] De mor. Germanor.——De majoribus omnes.

in all times their conſultations were about matters of the greateſt weight and importance, appears by thoſe who write of them.

It was thus likewiſe in the moſt antient and later generall publique councells of the French. The Druydes are related to have mett in dietts, and generall councells, [y] and to doe right univerſally to the Gauls. And that for the diſpatch of the affayres of greateſt importance, and which were of greateſt concernement to Gaul, they uſed to hold their diettes, or generall councells.

[z] Thuanus reports that, in thoſe generall councells, they acted † concerning the neceſſities and inconveniences of the kingdome. And [a] Lupanus informes us, that their aunceſtors, being to conſult about any great and weighty matters concerning the commonwealth, uſed to call the three eſtates: and they uſed to meet [b] when any difficult and weighty matter was to be treated on.

Du Haillan deſcribes the power and authority of the firſt parlements in France to be, [c] that there were decided all the affayres of conſequence, and importance to the kingdome. And although it hath bin alike practiſed in Denmarke, Sweden, Poland, and in thoſe and other parts of the world generally, to call aſſemblyes of the people's deputies, and of the nobles, to conſult togither about matters of great weight and importance; as may be found by the peruſall of their ſtories, and is conſonant to reaſon as

[y] Paſquier, recherches de la France, f. 7.——Univerſallement aux Gaulois.

[z] Lib. xxvii. De regni neceſſitatibus ac incommoditatibus. † Quaere, *aſked?* (M) [a] Lib. ii. f. 453. [b] Thuanus, lib. xxxiv. f. 205.——Aliquod arduum tractandum. [c] De l'eſtat des affaires de France, f. 180.——Se decidoyent tous les affaires qui importoyent de quelque conſequence au royaume.

well

well as the universall practise in all countries. Yett it is not to be denyed, butt that such councells have admitted of some ebbings and flowings of their authority and powers, according as exigencies have bin; and where the disability of a prince, thorough minority or otherwayes, wanting power, or meeting with too strong opposites or common violence, hath bin constrained to abandon some of his own rights, and the councell hath grasped too much: yett for great and weighty matters, surely such advice will be found best and safest.

CHAP. XVI.

Concerning us.

MATTERS to be treated on in parlement, doe generally concerne the king; as they concerne the kingdome, wherof he is the head. But ſome may be ſaid more perſonally to concerne him, and his family, and poſterity, than others: as matters concerning the education of a prince when under age, wherof are many inſtances in our records; as [a] where the archbiſhop of Canterbury, before the king and lords in parlement, beſeeched, that the king might be virtuouſly brought up in his youth, and have good counſell; and the temporall lords wiſhed for the like bringing up of the king in virtue. And the commons had before [b] petitioned, that their names might be known who ſhould be about the king's perſon, bringing him up in virtue: and [c] counſellors for the king, are appointed.

During the ſame king's minority [d], order was alſo taken by the parlement, to examine the revenews, and to ſurvey the king's moveables. The like order was taken by parlement, which I omit perticularly to recite, touching the perſons, eſtates, and education of our kings H. 6. and E. 6. in their minorities; and which are to be found in the records of the beginning of their reignes: as alſo in the hiſtories of thoſe and of others of our kings of England, when they were under age.

[a] 2 R. 2. rot. parl. n. 27, 28. [b] 1 R. 2. rot. parl. n. 19.
[c] N. 22. [d] 2 R. 2. rot. parl. n. 11.

In

In the act of reſumption [e] by H. 4. the parlement takes care, that no grants to the queen, or to any of the king's ſons, ſhall be impeached. [f] Another confirmation by parlement of the queen's dowrey. [g] The like in the time of E. 4. [h] In R. 2. time, the commons petition concerning the queen's gould. [i] And in E. 4. time, the parlement went ſo farre as to make a proviſion for mother Cob, the queen's midwife. Butt theſe matters are not neceſſary to take up much of our time.

The parlement have taken care of the king's wifes, and of their children. As [k] when they recommended to H. 4. the perſons of the queen, the prince, the Lords Thomas, John, and Humphrey the king's ſons; and pray their advancement: for which the king thanketh them, and promiſeth ſatisfaction. And the ſame was done [l] by them two years after. So the commons prayed, [m] that the king's grandchild might be made prince of Wales, as his father was; wherin the lords promiſed to be mediators to the king. [n] And the like requeſt was made for Henry ſon of H. 4. who was accordingly created prince of Wales in full parlement. [o] In the following parlement they take care of the queen and her daughters. [p] The confirmation of Edward, the ſon of king H. 6. to be prince of Wales, is by the lords and commons in parlement: [q] and they take order touching his maintenance. [r] The like creation of E. 4. his ſon, to be prince of Wales, is.

[e] 6 H. 4. Rot. parl. n. 22. [f] 25 H. 6. Rot. parl. n. 15. [g] 8 E. 4. Rot. parl. n. 31. [h] 7 R. 2. Rot. parl. n. 61. [i] 13 E. 4. Rot. parl. n. 14. [k] 11 H. 4. Rot. parl. n. 44. [l] 13 H. 4. Rot. parl. n. 27. [m] 50 E. 3. Rot. parl. n 41. [n] 1 H. 4. Rot. parl. n. 72. [o] 5 H. 4. Rot. parl. n. 31. [p] 31 H. 6. Rot. parl. n. 47. [q] 33 H. 6. Rot. parl. n. 52. [r] 12 E. 4. Rot. parl. n. 12.

The

The creation of the ſon of H. 7. was alſo in parlement, to be prince of Wales. And in ſome of our memories [s], the creation of prince Henry, eldeſt ſon of our late king James, was in the parlement. [t] The parlement alſo frequently made orders touching the expences of the king's houſe, and his ſervants, and of the imbeziling [u] of his goods, and the like. And in this king's reigne, [w] the commons deſire the king would hold them excuſed, for that report was made, that they had talked of the king's perſon otherwiſe than them beſeemed; which was untrue: and ſo the king by anſwear took the ſame.

It is likewiſe an uſuall thing for parlements, and publique councells, to treat concerning the marryages of their princes, and their children; and the ſame to be required of them, as our antient, and later hiſtories affirme.

[x] King Leyr is ſaid to have adviſed with his peeres, about the mariage of his two daughters, heirs to the crowne. And Octavius king of the Brittons, adviſed [y] with his counſellors about the maryage of his daughter, to whom he ſhould in marryage give her and the crown: and by their advice, ſhe was maryed to Maximinian, a roman ſenator diſcended of the brittiſh royall bloud [z], who with her injoyed the crown, as was decreed by the peeres.

Ethelſtan, the ſaxon king, adviſed [a] with an aſſembly of the peeres, about the maryage of his ſiſter to the king of France.

[s] 8 Ja. Rot. parl. part 9. n. 17. [t] 5 H. 4. Rot. parl. n. 33.
[u] 1 H. 4. Rot. parl. n. 126. [w] 8 H. 4. Rot. parl. n. 14. [x] Galfr. Mon, Pontic. Verunnius, Fabian, Holinſhed, Grafton. [y] Quaeſivit à conſiliariis. [z] Decreverunt ut ſibi regnum, cum puellâ concederetur.
[a] Malmeſb. lib. ii. c. 6.——In conventu procerum.

H. 3. about the marryage of his ſiſter Iſabel to the emperor, adviſed [b] with the biſhops, and great men of his kingdome; by whoſe advice, the lady was given in marryage to Frederick the emperour.

E. 3. adviſed with his parlement [c], whither they held it beſt to treate with the French by way of amitie, or marryage: the commons thinke by way of marryage to be the beſt; and ſome of the lords are appointed to treat thereof.

[d] In H. 6. time, the chancellor ſhowes to the parlement, how through the great travaile of the earle of Suffolke, and other noblemen, a marryage for the king was contracted; which the commons [e] eſpecially commended.

[f] In a petition of the commons to R. 3. is ſayd, that the marryage betwixt king Edward, and Elizabeth Grey, was made of great praeſumption; without the knowing, and aſſent of the lords of the land.

[g] The marryage of H. 8. and his queen Katherine, was diſſolved by act of parlement.

[h] The marryage of queen Mary, was aſſented unto by parlement, with ſome conditions.

[i] In the beginning of our queen Elizabeth's reign, the commons moved her to marry, as a thing which the kingdome infinitely

[b] Mat. Paris, p. 414. 30.——Cum epiſcopis et ſuis regni magnatibus.
[c] 5 E. 3. Rot. parl. n. 3. [d] 32 H. 6. Rot. parl. n. 2. [e] N. 8.
[f] 1 R. 3. Rot. parl. [g] Stat. 24 H. 8. [h] 1 Ma. [i] Cambden's Annales of queen Elizabeth, f. 196.

desired: seeing they could never hope to have better kings than out of her loynes; that princes ought to take care, that though themselves be mortall, yett the commonwealth may continue immortal; and that the kings of England have never bin more carefull, than that the royall family might not fail of issue.

The queen answeared. "In a matter most unpleasing, most pleasing to me is the apparent good will of you, and my people. She tells them of her cares, which would be multiplied by marryage; that she was marryed already to the kingdome of England; and showes the ring of her coronation; and saith, every englishman is my child; and resolves to live and dye a virgin." In the ninth year of her reign, the parlement tooke the same againe into consideration, and pressed the queen again to marry. Butt she, to a committee, reproved some unfitting speeches which had passed in the house about this matter, and diverted it. To the proposalls of her marryage with the duke of Anjou, she answeared, that she would assent, if the estates of the kingdome should so thinke fitt.

Lastly, the marryage of our king Charles 2. received much discussion in the parlement.

And as they frequently treated concerning the marryages of their princes and their children; so the parlement likewise ordered matters of succession: as in the cases of king Leyr, and Octavius, before remembred, wherin the succession was ordered [i] by common assent. The nobles and commons [k] opposed the succession of Edwin in Northumberland, uppon a good ground; that it was against

[i] Communi assensu. [k] Spelman. concil. p. 112. et Galfr. Monum.—— Contra jus veterumque traditionem, insulam unius coronae, duobus coronatis submitti.

right, and the tradition of the elders, that an iſland of one crowne, ſhould be ſubmitted unto two crowned princes."

[l] The councell of Calcuth, under Oſwold and Offa, ordeins what perſons ſhall be admitted to the regall ſucceſſion.

[m] The councell ordered Edward the ſon of Edgar to ſucceed his father. So was Cnute [n], by the generall councell, declared ſucceſſor to Edmond Ironſide. And after the death of Hardi Cnute without iſſue, [o] all the great men of England by common councell decreed, that no Dane, from thenceforth, ſhould ever reigne over them: and they declared Edward the confeſſor to the ſucceſſion.

So were W. Rufus and H. 1. admitted to the ſucceſſion. King John reſigned his crown to the pope's legate, and tooke it againe from him as his feudatary. Butt the barons told the legate, that England never was, is, or ſhould be the pope's patrimony. And it was enacted uppon that occaſion, afterwards in E. 3. time, [p] that no king could bring the realme in ſuch ſubjection and thraldome, butt by common aſſent in parlement; which was not done in the caſe of king John, butt what he did was againſt his oath: and if the pope ſhould attempt any thing heeruppon, that the king and his ſubjects ſhould reſiſt the ſame.

[q] Of the ſame judgement is the law of France, that the king cannot quit a patrimoniall right, no more than he can reſigne his king-

[l] Spelman. Concil. p. 291. [m] Ingulphus, Malmeſb. Huntingdon. [n] Brompton, Speed, Foxe. [o] Omnes Anglorum magnates de communi concilio ſtatuerunt. [p] 40 E. 3. Rot. parl. n. 7, 8, 9. [q] Haillan, f. 312. a. Un roy ne peut quitter un droit, non plus que reſigner ſon royaume à un autre.

dome to another: [r] and that a king cannot diſpoſe of his kingdome without the conſent of his barons.

So it is ſaid in our law bookes [s], in the caſe of H. 6. to the duke of Yorke: butt the lords in parlement ordered that ſucceſſion, as in the rolle [t] appeareth.

[u] An act of parlement declares the ſucceſſion to the crown in H. 8. and to his ſons and daughters ſucceſſively. And another [w] act reciting it, gives power to the king by his letters patents under the great ſeale, or by his will, to appoint his ſucceſſor.

[x] By an act of queen Mary, that of her father touching the ſucceſſion is confirmed: [y] and the like was done by her huſband, as to the ſucceſſion in Caſtile.

[z] Queen Elizabeth declared it high treaſon for any to affirme, that the lawes and ſtatutes could not define, and declare, and bind the right of the crown, and the ſucceſſion. Scotland agreed with France, [a] that they ſhould defend his ſucceſſion, to whom the eſtates of Scotland ſhould adjudge the kingdome.

The like acts as to marryages, and ſucceſſion of their princes, are obvious in the ſtories of other kingdomes, to have bin made by their publique councells; which to recite perticularly, would too much increaſe this volume.

[r] Moulin.——Un roy ne peut donner ſon royaume. [s] P. 13 Ja. B. R. f. 15, 16. [t] 39 H. 6. Rot. parl. n. 10. [u] Stat. 25 H. 8. c. xxii. [w] Stat. 28 H. 8. c. vii. [x] Stat. 1 Ma. c. i. [y] Thuanus, lib. xxiii. f. 483. [z] Cambd. Annales, f. 204. [a] Ibid. f. 122.——Eum defenderent cui Scotiæ ordines regnum adjudicarent.

CHAP.

CHAP. XVII

The ſtate.

THE ſtate of the kingdome of England may be conſidered, either in relation to the preſent condition of it; or to the generall and conſtant ſtate, and condition of it: both are proper for our occaſion.

The preſent condition and ſtate of England (bleſſed be God) is reſtored wonderfully to peace, and ſettlement; and reſcued from ſharpe and bloudy civill warres, from the worſt and moſt miſerable ſtate of civill diſſention, unto the beſt and moſt flouriſhing ſtate, a full and bleſſed peace. It will not, I hope, be thought impertinent, a little to diſcourſe of both theſe ſtates; and firſt of the calamitous ſtate of civill warre, wherby our hearts may be the more rayſed up in thankfulnes to God, by whoſe immediate hand, and immenſe free mercy, hath bin wrought all our deliverance.

[a] Tacitus gives his cenſure againſt civill warres, that they can neither be prepared for, nor undertaken by lawfull means. And Plutarch holds [b], that both the parties conquering and conquered doe wrong unto their countrey. Of thoſe of Caeſar Suetonius ſaith [c]; that "he never gained ſo much by a victory, as that the calamity attending it, could be recompenced."

Civill diſcord had an early beginning in the world [d]. When there were butt two brethren uppon the earth; one of them, Cain, roſe up againſt Abel his brother, and ſlew him.

[a] Lib. viii.——Neque parari poſſunt neque haberi per bonas artes. [b] In Othon.——Patriae injuriam afficiunt. [c] Cap. vi.——Quantum auferre calamitas poſſet. [d] Gen. iv. 8.

[e] With brother's bloud are the firſt walles
Diſtained; of two, there's one that falles.

From hence it ſpread into the family of good Abraham, of Iſaac, and of Jacob; and indeede tooke deep roote, and ſpread itſelfe univerſally. We reade of no nation, which hath not bin under the ſad calamities of it.

The people of Iſrael were not exempt from it. [f] There was warre between the houſe of Saul, and the houſe of David; [g] and between Rehoboam, and Jeroboam, all their dayes [h]; and between Aſa, and Baaſha; and others.

The Babilonians, Aſſyrians, Medes, Perſians, Graecians, and all our later and neighbour nations, have lyen under this great judgement. Thoſe of the Romans att Pharſalia, are heroically related by their poet [i], and as well engliſhed by Tho. May.

Warres more than civill on Æmathian plains,
We ſing; rage licens'd, where great Rome diſtains
In her own bowells, her victorious ſwords, &c.
—— No ſword could reach ſo farre,
Deepe pierce the wounds received in civill warre.

The miſeries of civill diſſention have bin early, and often layd upon this nation, as a puniſhment for our ſins. [k] We reade of

[e] Lucan. Fraterno primi maduerunt ſanguine muri. [f] 2 Sam. iii. 1.
[g] 1 Ki. xiv. 13. [h] 1 Ki. xv. 6, 7. 16. 32.
[i] Lucan. Bella per Æmathios pluſquam civilia campos,
Juſque datum ſceleri canimus, &c.
[k] Pontius Verunnius.——Galf. Mon.

them

them in the time of Brute's children, and of the brittiſh king Leyr; and often in the reign of their britiſh ſucceſſors; and of the great and bloudy civill warres, in the reigns of many of our ſaxon princes, to the laſt of them Edward the confeſſor, with earle Godwin and his complices; and the cruelties exerciſed by them.

After the time of duke William, our ſtories mention thoſe in H. 2. time; the barons warres in the times of king John and H. 3. touching confirmation of lawes, and liberties; thoſe between the two houſes of Yorke and Lancaſter, whether an Edward or a Henry ſhould be king; and when either party prevayled, all was quiett whileſt his power laſted. Butt bejond all, were our late civill diſtractions, when the flames burned a long time without intermiſſion; and had conſumed us to nothing, had not our mercifull God interpoſed his deliverance.

Petrarch ſayth, "[l] that in civill warre the commonwealth is att the laſt gaſpe:" ſo was England, and neere to that obſervation of the duke de Rohan[m], who ſaith, that England is a great creature which can never dye, unleſſe it kill itſelfe. To doe this, England laboured with all its might, many years togither; when

> Brother's bloud did feed the civill ſtrife;
> And he, that gave, bereft his child of life.

It is truely noted, "[n] that there is not a miſchiefe more miſerable, nor more ſhamefull; a ſea of infoelicities! not properly a warre, butt a malady of the ſtate, a fiery ſickneſs and frenzy! the authors

[l] Reſpublica in extremo eſt.

[m] P. 294.——Eſt un grand animal, qui ne peut jamais mourir s'il ne ſe tue luy meſme.

[n] Charron, de ſageſſe.

wherof

wherof deſerve to be putt out from the number of men, and baniſhed out of the borders of humane kind, as cauſers of all wickednes, impiety, and cruelty; and that even between head and members, parents and children, brothers and brothers; no relation, age, or dignity protecting any man; [o] the nobility periſh with the common people; and the ſword wanders farre and neere, greedy or mercenary in all evill.

For the actors (as I have ſeen) the inferior and baſer ſort are companions with the beſt. Caeſar (ſaith one) was both my captain, and companion on the river Rhine. They are indeed [p] all fellow-ſoldiers: [q] thoſe whom miſchief defileth it maketh equalls; and which is more, yett as true, [r] their leaders not daring to prohibite what they diſlike. Oh! 'tis nothing elſe butt miſery, a poyſon that conſumeth humanity! the Lord keep us, that the voice therof may no more be heard within our habitations.

From this contagion the Lord was pleaſed to recover England; and to beſtow, in our preſent ſtate, a full and bleſſed peace uppon us, which we now injoy: and may it be injoyed in this land, till time ſhall be no more. [s] Our God hath made peace within our borders, and given us plenty; filled us with the fineſt of the wheate; [t] favoured us with peace within our walles, and proſperity within our palaces. How ought we to bleſs his name, who hath thus redeemed us! to endeavour meekly and piouſly the preſervation of our peace, and of unity amongſt us! to forgett all former injuries, to lay aſide all rancor, and to forgive as we pray to be forgiven! The

[o] Nobilitas cum plebe perit. [p] Commilitones. [q] Facinus quos iniquat aequat. [r] Obnoxiis ducibus, et prohibere non auſis. [s] Pſ. cxlvii. 14. [t] Pſ. cxxii. 7.

hebrew

hebrew word [u] for peace ſignifies alſo tranquilitie, ſafety, and all kind of proſperity and happineſs the companions of it.

[w] St. Auguſtin commends peace for ſuch a good, that in created things there is none more gratious to be heard of, none more pleaſing to be deſired, and none more profitable to be injoyed.

[x] Caſſiodore affirmes, that heerin the grace of a king is extolled, if he governe his people in the equity of peace. Hence our king James tooke his motto, "[y] Bleſſed are the peace-makers; and the reaſon therof is given, [z] for they ſhall be called the children of God." [a] The orator ſaith: "If we conſider all things which are pleaſing and gratefull to men; [b] nothing is ſo popular as peace." Wherof the poet ſings.

"[c] Peace the full worke of virtue is, of all
Our labours the wiſht end, which we may call
The price of warre and daunger; the bright ſkies
And earth flouriſh in peace. No ſacrifice
Or ought elſe pleaſeth God, unles it be
Perform'd in peace, and ſoul's ſerenitie."

Butt there needs not other authorities, where the holy text is ſo full as uppon this ſubject: and one, who hath bin too much converſant in our late troubles, may hope for pardon, if he cannot ſoon leave off his juſt admiration of this bleſſing of peace.

[u] שלם [w] De civitat. Dei.——Nihil gratioſius ſolet audiri, nil delectabilius concupiſci, et nil utilius poſſideri. [x] Lib. i. Epiſt.——Si in aequitate pacis populum dirigat. [y] Beati pacifici. [z] Mat. v. 9. [a] Cicer. pro lege agrar. [b] Nihil tam populare quam pacem. [c] Pax plenum virtutis opus.

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In the annunciation of happines to the world by the birth of our ſaviour, the hallelujah, proclaimed by the heavenly hoſt [d], is, " Glory be to God in the higheſt, and on earth peace, good will towards men." The bleſſing, promiſed to David [e], is, that uppon him, and his ſeed, and his houſe, and throne, ſhall be peace for ever from the Lord. Of his ſon Solomon God ſaith, " [f] I will give peace and quietnes to Iſrael in his days." The pſalmiſt aſſures us, " [g] that the Lord will bleſſe his people with peace." The way, to have peace, is to gett an intereſt in the God of peace; to be his people, and then he will bleſſe us with peace: he will ſpeake peace to his people, and to his ſaints. And the like expreſſions are in many other texts [h]. Alſo in many p'aces [i] the Lord is pleaſed to ſtile himſelfe the God of peace. And it is a great injunction to all God's people, to ſeek peace and purſue it: and of wiſdome, which is Chriſt, the wiſe man ſaith, " How beautifull uppon the mountaines are the feet of him, that bringeth good tidings," that publiſheth peace. Some doe affirme, that there was an univerſall peace in the world, in the time of Auguſtus, when our ſaviour was borne. So the prophets [k] declare it as a generall bleſſing to the world, uppon the comming of his kingdome, " that they ſhall beate their ſwords into plougſhares, and their ſpeares into pruning hookes; nation ſhall not lift up ſword againſt nation, neither ſhall they learne warre any more."

[d] Luke ii. 14. [e] 1 Ki. ii. 33. [f] 1 Chron. xxii. 9. [g] Pſ. xxix. 11. and lxxxv. 8. and cxxv. 5. and cxxviii. 6. and cxliii. 14. [h] Pro. iii. 17.——Iſa. xxxii. 18. and lx. 17. and lxvi. 12.——Jer. xiv. 13.——Hag. i. 9.——Lu. i. 7. [i] Rom. xv. 33. and xvi. 20.——2 Cor. xiii. 11.——Phil. iv. 9.——Theſ. v. 23.——Heb. xiii. 20.——Pſal. xxxiv. 14.——Pro. iii. 17.——Iſa. lii. 7. [k] Iſa. ii. 4.——Mic. iv. 3.

Thus [l] when all things were wearied, with civill diſcord, the God of mercy appeared for our reſcue, and brings us peace; which wee all deſired, who are any way worthy of it.

[m] O bleſſed peace, by all thou art deſir'd;
Butt moſt by thoſe whom civill war hath tir'd.

May thoſe rott, who ſhall goe about to renew our diſcords, or diſturbe our peace! The conſtant, domeſtick, civill ſtate of the kingdome, to be conſidered by the parlement, conſiſteth chiefly in theſe two things, the preſervation of the peace, and the promoting of trade. The preſervation of peace conſiſts in the due adminiſtration of juſtice; which is of two ſorts, diſtributive juſtice, and commutative juſtice. [n] Diſtributive juſtice hath, for its object, good and evill; for its end, reward and puniſhment: and [o] commutative juſtice hath, for its object, matter of property; and for its end, to give every one his due. Theſe matters are proper for the parlement's conſultation and action, who are governors ſent by God [p], for the puniſhment of evil doers, and for the praiſe of them that doe well: and it is their care to ſee, that all the magiſtrates be ſuch, and to remove thoſe which are not. They are alſo to ſee that property be preſerved; that to all [q] be rendred their dues: that ſuch judges, juſtices, and officers, as are ſett over the people, be according to the counſell of Jethro [r], able men, ſuch as fear God, men of trueth, hating covetouſneſs; and whom they find otherwiſe, to pray the

[l] Tacitus.——Cuncta diſcordiis civilibus feſſa. [m] Pacem te poſcimus omnes. [n] Juſtitia diſtributiva——bonum et malum, praemium et poena. [o] Juſtitia commutativa——meum et tuum, ſuum cuique tribuere. [p] 1 Pet. ii. 14. [q] Rom. xiii. 7. [r] Exod. xviii. 21.

king, that they may be removed, and fitt judges placed in their roomes. They have alſo power to puniſh any [s] who judge for man, and not for the Lord; who reſpect perſons, or take guifts, or any way miſdemeane themſelves in their offices. And whileſt the courſe of juſtice is kept uncorrupt, whileſt offenders are puniſhed, and well-doers rewarded; when every one injoyes his due right and property; it is a great means to preſerve peace.

The other part of the domeſtick ſtate of the kingdome, conſtantly to be taken care of by the parlement, is the promoting of trade; wherof, the wiſdome of our aunceſtors had a very great regard; and for that end, ſo many cittizens and burgeſſes have place and vote in our parlements; wherof there will be occaſion to diſcourſe more perticularly heerafter, when the words of the writt bring me in my methode to thoſe parties.

Certainly trade is the principall vitall of a civill commonwealth; eſpecially of illanders, whoſe commerce by navigation muſt both vent their owne commodities, which they may ſpare; and import forein merchandiſes neceſſary for their uſe, or profitable to them in the way of traffique; and perticularly beneficiall to the ſtate, in the breeding up and imployment of mariners, and increaſing our ſhipping, our chiefeſt outward ſtrength; the which is much advanced, and the king's revenue in cuſtomes, by the incouragement of trade; and likewiſe the values of lands, and the rents of the owners of them are therby augmented.

[s] 2 Chron. xix. 6, 7.

Chiefly, our great trade and manufacture of clothing is to be regarded; wherin conſiſts no ſmall part of the riches of the kingdome; and all manufactures deſerve incouragement; and the artizans are not to be contemned; nor the generous merchants, by whoſe knowledge of forrein countryes and their adventures therunto, no ſmall glory, ſtrength, and riches are added to the nation.

CHAP. XVIII

And defence.

THE defence of the kingdome is indeed the proper buiſnes of a parlement: and the wayes of defence are, to take care of the forces by land and ſea, and the imployment of them either in defenſive or offenſive warre, as there ſhall be occaſion; and for the better ſtrengthning of the ſtate; to take care touching leagues, and peace with our neighbours.

Concerning the care of the forces, the levying and arraying of them, and principally touching the ſhips of warre, and ſafeguard of the ſeas; ſcarce a parlement hath bin ſitting, whoſe buiſnes hath not bin about theſe matters, as our records abundantly manifeſt.

The power of the militia of the kingdome hath bin a queſtion too much diſputed, and too much decided in all countryes by itſelfe. The law ſeemeth ſometimes clearer in that point, than in other times. Sure I am, it is a point too high for the diſcuſſion of my pen.

The conſtant old way of levying ſoldiers was by indentures; wherof there are great numbers yett remaining in the receipt of the king's treaſury, to be ſeen in the tally office; and wherby the courſe appears to have bin, that when the king had occaſion to rayſe ſoldiers, the noblemen and great men did ſeverally covenant, by indenture with the king, to bring to him, to ſuch a place, att ſuch a time as was agreed, ſuch a number of horſemen or footmen ſo armed, to ſerve for ſo many dayes, att ſuch wages, as in the indentures are ſpecified. Then the noblemen in like manner covenanted

nanted with ſeverall gentlemen in their countryes; and the gentlemen with their tenants and retainers, untill their reſpective numbers were compleated: by which means the certainty of the numbers and expences was the better knowne; the king ſerved by the better men; and the ſoldiers, going with their neighbours and countreymen of intereſt with them, expreſſed the better courage and obedience.

Somewhat after this manner is the uſage att this day in Sweden; where the ſtanding forces, which are a very great body, are liſted under the noblemen and gentlemen of the ſeverall provinces, as their ſuperiour and inferiour officers named by the king. And theſe officers agree in their countryes, with the inhabitants and boores, of whoſe ſons and ſervants for the moſt part their companies are made up. Theſe have a very ſmalle allowance from the crowne; and no conſtant pay, butt when they are drawne out into actuall ſervice. A boore is not obliged to take them to quarter in his houſe, butt uppon termes between them; which commonly are, if the horſeman will worke himſelfe and his horſe with the boore, and the footman labour in the buiſnes of his huſbandry, the boore will give them man's meat and horſe meat, their ſtove and their ſtable: otherwiſe, there is no quarter for them. And by this means the ſoldiers are kept from idlenes; and beſides their allowance from the crowne, have their diett for their worke; and the boore hath their worke for their diet only: ſo the boore and the ſoldier both have a benefit by this way: and by theſe forces the kingdome is alwayes in a good poſture of defence, att a ſmalle charge, and hath a full ſeminary of ſoldiers, out of which he can draw what numbers he pleaſes for his occaſions bejond ſeas. Butt no man is compellable therunto, except it be enacted by their rickſdagh: as the law of England

England was as antient as E. 3. [a] time; when it was enacted, that no man be compelled to goe out of his countey, except uppon the ſuddein comming of ſtrange ennemies. Butt this is alſo a point above my quill. Certain it is, and evident by records and hiſtories, that the kings of England, and of other countryes, have conſtantly in matters of warre, and peace, of leagues, and treaties, adviſed with their publique councells.

Our elder ſtories mention Brute, Belinus, and Brennus, Caſſivelane, Arviragus, Vortigerne, Aurelius Ambroſius, and generally all the britiſh, ſaxon, daniſh, norman, and other kings of this nation, as of all other countryes, who in matters of war have adviſed with their publique councells, as a ſafe and prudent courſe; the perticulars wherof are too many to be recited. Such conſultations touching the warres with Scotland, and in other countryes, and of thoſe in France, are to be found in the rolles [b] cited in the margent; wherby it will appear, that in all times of war, the advice of the parlement was therin required, and that by our beſt and wiſeſt kings: and the ſame courſe continued conſtantly, even to our times. And it is noted, and not impertinently, that whenſoever advice was taken in theſe matters of the publique councell; the deſigne undertaken by their

[a] Stat. 1 E. 3. c. v. and 18 E. 3. c. vii. and 25 E. 3. c. viii. and 4 H. 4. c. xiii.

[b] 6 E. 3. Rot. parl. n. 6. 50 E. 3. n. 2. 1 H. 4. n. 81. 8 H. 4. n. 2. 17 R. 2. n. 1. 1 H. 4. n. 9. 6 E. 3. Rot. parl. n. 1. 17 E. 3. n. 9. 18 E. 3. n. 8. 25 E. 3. n. 7. 42 E. 3. n. 7. 45 E. 3. n. 1. 47 E. 3. n. 2. 50 E. 3. n. 2. 51 E. 3. n. 12. 2 R. 2. n. 6, 19, 25. 3 R. 2. n. 5. 4 R. 2. n. 3. 6 R. 2. n. 7 R. 2. n. 3. 8 R. 2. n. 2. 9 R. 2. n. 4. 10 R. 2. n. 2. 11 R. 2. n. 1. 14 R. 2. n. 1. 15 R. 2. n. 2. 17 R. 2. n. 1. 2 H. 4. n. 12. 4 H. 4. n. 3. 6 H. 4. n. 3. 11 H. 4. n. 2. 2 H. 5. n. 5. 3 H. 5. n. 3. 4 H. 5. n. 3. 7 H. 5. n. 1. 14 H. 6. n. 2. 27 H. 6. n. 17. 29 H. 6. n. 1. 8 E. 4. n. 28. 14 E. 4. n. 18.

advice

advice had much the better ſucceſſe: and the reaſon therof is evident; bicauſe the deſigne and undertaking, being by common conſent, gives the greater ſatisfaction to the people in generall, whoſe purſes and perſons are neceſſary for the aſſiſting of thoſe undertakings; and the actors therin will be the more ready, and diligent in their duetyes.

For matter of peace conſidered by our parlements, the like inſtances are in our hiſtories and records. As that between Belinus and the Danes, is ſaid to be made, [c] the peeres being called togither; who aſſented to it.

King Etheldred by the counſell of his chiefe men [d] made a peace with the Danes, and gave them the tribute [e] for the good of peace. The like was (again) done by him, the king and the ſenate of England [f] aſſenting to it.

Richard the firſt is ſaid to make a peace with the king of Fraunce; [g] there being preſent the biſhops, and great men, of both kingdomes, who aſſented to it.

[h] In the peace between our king John and France, it was agreed, that if either king did breake it, his barons ſhould be abſolved of their fealty, and take part with the other.

The peace [i] between our king H. 3. and Lewis of France was by advice of their councells. That between E. 3. and Scotland [k] was

[c] Galfr. Mon.—Convocatis proceribus. [d] Primates. [e] Pro bono pacis. [f] Rex et ſenatus Anglorum, &c. [g] An° 1188. Mat. Paris, p. 156. 50.—Epiſcopis et magnatibus utriuſque regni. [h] Houed. p. 765. an° 1201. [i] An° 1217. [k] 2 E. 3.

concluded

concluded by the parlement, att Northampton. And (that) between England and France [l] was propoſed to the parlement, and a cauſe of the ſummoning therof declared to be, concerning the truce in Britain: and it is ſayd, that as the king attempted not the war without the parlement's aſſent; ſo without the ſame he would conclude no peace. Wheruppon the lords and commons ſeverally gave their advice, that it was good to purſue the peace. And the like conſultations [m], touching the ſame matter of peace, are in ſundry other of the rolles.

The like may be found in our records [n] touching matter of peace with Scotland, which was ſometimes denyed by the lords and commons, and ſometimes by them aſſented to; as their wiſdome, and judgements guided them. And there is very much of theſe matters in our records, and ſtories.

The like advice and determinations have bin in our publique councells, touching leagues, and treatyes. As our ſtoryes mention the league between Brute and Pandraſus [o], by advice of his elders. And that of Arviragus with Claudius the emperor. Belinus, by advice of his publique councell, made the league with the king of Denmarke. So was the league between Octavius and the Romans [p], by the great men's advice in councell; and the league in king Arthur's time; and the like of the leagues made by the ſaxon princes.

[l] 5 E. 3. Rot. parl. n 7. and 17 E. 3. n. 7. and n. 9. [m] 18 E. 3. Rot. parl. n. 6. and 20 E. 3. n. 2. 28 E. 3. n. 2. and n. 58. 29 E. 3. n. 5. [n] 43 E. 3. Rot. parl. n. 1, 2. 7 R. 2. n. 4. 13 R. 2. n. 1. 14 R. 2. n. 1. 17 R. 2. n. 1. 6 H. 4. n. 10. 3 H. 5. n. 14. 4 H. 5. n. 3. 14 H. 6. n. 1. 23 H. 6. n. 23. [o] Galfr. Mon.——Majores natu. [p] Magnates Britaniae.

The

The league between king John and the French, and his barons, was made [q] by common aſſent of all of them. And the Commons, having given ayd to R. 2. [r] do require, that if any league be taken with the enemy, the profit may be layd up, for the eaſe of the commons.

A league, between H. 5. and Sigiſmond king of the Romans [s], is confirmed by whole aſſent of parlement; and the inſtrument of this alliance is uppon record, in the rolles of this time.

A graunt was made by parlement, to the queen dowager [t], in purſuance of a league.

The league between the duke of Burgundy and the French, was conſidered by the parlement of H. 6 [u]. Likewiſe leagues between this king and E 4, and Fraunce; and ſo conſtantly in the ſucceeding parlements, to our times.

Of the jewiſh publique councell, the ſanhedrim, it is ſayd, that they had cogniſance of warre, of leagues, ambaſſadours, &c [w]; butt it did not bind all without the conſent of the ſanhedrim. And the king, being to begin a war with any of his neighbours [x], was of neceſſity firſt to conſult with the great ſenate, without whoſe conſent the ſoldier was not to goe forth. And according to this, in expreſſe

[q] Mat. Paris, p. 253. 7.—Communi aſſenſu. [r] 5 R. 2. Rot. parl. n. 68. 6 R. 2. n. 9. [s] 4 H. 5. Rot. parl. n. 14. [t] 1 H. 6. Rot. parl. n. 40. [u] 1 H. 6. Rot. parl. n. 40. 23 H. 6. Rot. parl. n. 2. and 8 E. 4. n. 27.

[w] Schiccardus. Jus reg. Hebr. c. Electio, p. 9. et Maimon. c. v. p. 7. Schiccard. c. bellum.——Invito ſynedryo, nec omnes obligabant. [x] Miſn. Melach, c. ii.——Neceſſario prius deliberabat cum magno ſenatu, citra cujus conſenſum miles non exibat.

termes, is the law of England: alſo that of Sweden, Germany, and moſt other countryes. For leagues, that of Joſhua [y] made with the Gibeonites was with conſent of the princes of the congregation, who ſware to it; and many other inſtances doe occurre in the holy ſtory.

If any perſon or citty of Italy required helpe of the Romans [z], or ſupport, the conſideration therof was had by the ſenate. If any ambaſſy were to be ſent forth on any occaſion, or to denounce war, the ſenate was to provide for it; and how ambaſſadours comming to Rome ſhould be intertained, and anſweared. And the like was done [a] by the graecian ſenates. The like was in Germany [b], as att the diet of Ratiſbone they decreed the caſtle of the Gothes to be demoliſhed; and frequently determined matters of war and peace [c], reſtraint of the licentiouſnes of the german ſoldiers, concerning militarie diſcipline, of publique peace, of the charges of the gothique war, of fortefying of towns, caſtles, and ſtrong houlds, and the like.

The antient councells of the Netherlands [d] exerciſed the like power, in matters of war, and peace: wherwith agrees another of their countrymen [e]; and the preſent conſtant practice ſhews it. And they, togither with the generall [f], determine of war, conſider of money, proviſions, armes, commaunders; and whither, how farre, when, and how they ſhall lead them: they heare ambaſſadors, make peace, confirme leagues, &c.

[y] Joſ. ix. 15. [z] Roſinus, de antiquit. Rom. p. 280. [a] Gothofred. lib. ii. p. 699. [b] Thuanus, lib. vi. f. 131. [c] Ib. lib. xlv. f. 936.
[d] Grotius de antiquitat. reipub. Bat. f. 35, 36. 42. [e] Paulus, p. 127, 128.
[f] Bellum decernere, exercitus conſcribere, conſcriptis peritos animoſoſque dare duces, &c. Legatos audire, pacem facere, foedera ſancire, &c.

The

The three eſtates, in France, had the like power, and practiſe[g]. They gave anſwears to ambaſſadours; and conſulted about making of peace, or waging of war, ſending of ambaſſadours, &c. levying of ſoldiers, correction of their abuſes, and of all things neceſſary for the conſervation and tranquilitie of the kingdome.

It were no difficult taſke to find out many more inſtances on this ſubject, both in France and in all other countryes, of determinations by their publique councells of matters of war, peace, and leagues, and the publique defence; as things moſt agreeable to the nature, reaſon, and inſtitution of ſuch councells.

[g] Paſquier, recherches, p. 42.—Donnoient reſponces aux ambaſſades. Lupanus, lib. ii. f. 453. Honorius de regn. Gall. f. 537.

CHAP. XIX.

Of our kingdome of England.

MATTERS concerning the king, and the ſtate and defence of the kingdome of England, are moſt proper for the debate, advice, and determination of the parlement of England: they are ſuch things as concerne all the people; and therfore fitt to be conſidered and reſolved by the councell of all the people, their deputies, by whom all of them are repreſented in parlement. And they are the parlement of England only; and their acts are not binding in the kingdome of Scotland. And although (through the goodnes of God) both kingdomes are united under one head and ſovereigne; yett the parlement of Scotland is a diſtinct and independent power, not ſubject to the parlement of England. And the queſtion, of the ſuperiority of the crown of England over Scotland, is better left undiſputed, than diſcourſed on [a]. So are thoſe records in the tower of London in E. 1. time; who, having obteined great victories in Scotland, did exerciſe his regall power in many things in that kingdome, and cauſed matters of that kingdome to be determined in his parlement of England. Butt it laſted not long; the Scotts recovering their former powers and authorities. And doubtles, their parlements are as antient [b] as their governement, and much agreeable to that of England. Butt no law is of force to bind the ſubjects of Scotland, except it be enacted by the parlement there, with the royall aſſent of the king; the which he gives there as king of Scotland, and according to the lawes and uſages of that nation.

[a] Lib. apud turrim, et record. de ſtatu regni Scotiae.

[b] Lib. de antiquis Britan. legibus, c. vi. f. 16.

That

That the Gothes, and Danes, and northerne people, came into Scotland with their king Fergus the ſecond [c], appears in their chronicles of that time; and in them is mention of a law made by Ferathris 2, in the year before Chriſt 305, concerning the governement of the kingdome by the next of kindred, in theſe words; "Gif the ſons of the king departed were ſo zoung, that they could not rule; then the next of the kindred was to be preferred:" and this by an act of their publique councell of that antiquity. Their law booke (which ſome take to have bin a tranſcript of our book of Glanvill) informes us, [d] that all the barons graunted to the king wardſhip, and reliefe; and this was their parlement, and very antient. And in their printed ſtatutes under king James the firſt [e], who reigned about 300 years ſince, it was enacted; "that the ſmall barons, and free tenants, neid not to come to parlement, nor generall councells; ſwa that of ilke ſhirefdome ther be ſend, choſen att the ſecond head court of the ſhirefdome, twa or maa wiſe men, after the largenes of the ſhirefdome."

Butt I ſhall not need to travaile farre in this argument: all the hiſtories, and records of that kingdome, doe abundantly ſatisfy for the antiquity, and independancy of their parlements; and to diſcourſe much theruppon may ſeeme an injury to the rights of that nation.

For Ireland it is otherwiſe; that being a kingdome dependant and ſubordinate to the crown of England. And although, by the favour of our kings, they have their parlements within themſelves: yett no act made in them is binding, untill it be ſuperviſed, and confirmed, by the king and his councell in England.

[c] An° 404. [d] Regia majeſtas. Leg. Ma'colmi 2. c. i.——Omnes barones conceſſerunt. [e] Stat. 7 Ja. 1. c. ci.——Seld. Tit. hon. f. 848.

Some

Some ſuppoſe the parlement of Ireland to have begun in 17 E. 3. butt the contrary is made appear [f]; and that king John, and his father H. 2. did commaund, that the lawes of England ſhould be of force in Ireland; and that in king John's time a parlement was held there, as appears [g] by a record in H. 3. time. And for the authority of the treatiſe [h] called the manner of holding of parlements, (which ſome of as little learning do oppugne) our author ſaith, [i] that H. 2. ſent it into Ireland, to direct the holding of parlements there. H. 3. commaunded [k] the lawes of England to be obſerved in Ireland. And ſometimes the king of England called his nobles of Ireland, to come to his parlement of England: as when E. 2. [l] commaunded Richard de Burgh earl of Ulſter and other nobles of Ireland, to be att his parlement att Weſtminſter; to treate there, with the peeres, &c. about the ſtate of that land. He alſo holds, and it is not controverted, butt that, by ſpeciall words, the parlement of England may bind the ſubjects of Ireland: as by the record before cited, and divers others it is evident. As where the king [m] commaunds, which was by his parlement heere, that parlements ſhall be holden yearly in Ireland. And in another parlement att Nottingham [n], ordinances were made for reformation of the ſtate of Ireland: the like [o] was in E. 3. time. And bicauſe the acts of parlement in England did not extend to Ireland, unleſſe it were ſpecially named, or by generall words included [p]: an act was made att a parlement in Ireland, when Sir Edward Poynings was deputy there, that all ſtatutes made in England ſhould be of force in Ireland, and be confirmed there. This act was afterwards explained,

[f] Coke, 4 Inſtit. p. 349. [g] 18 H. 3. Rot. m. 17. n. 31. [h] Modus tenendi parliamentum. [i] Co. 4 Inſt. p. 12. [k] 30 H. 3. Rot. parl. [l] 8 E. 2. Rot. parl. n. 31. [m] 10 E. 2. Rot. parl. and rot. clauſ. m. 38. [n] 17 E. 2. Rot. parl. 1 pt. and rot. parl. m. 3. [o] 17 E. 3. Ordin. pro ſtat. Hib. [p] Lib. Alb. in Scaccar.—10 H. 7. Poynings's law.

in

in ſome doubtfull points therof[q], by an act in queen Marye's time. The manner of holding parlements was certifyed, uppon conſultation[r], to be thus: 1. The lieutenant and councell of Ireland are to certify, under the great ſeale of Ireland, the cauſe, and conſiderations, of ſuch acts as ſeem good to them to be paſt in Ireland. 2. They are to be affirmed, or altered, and returned under the great ſeale of England. 3. Licence under the great ſeale, here, to ſummon, and hold a parlement there. 4. To tranſmit billes, ſitting the parlement, as before.

Although our writt of ſummons be for great affayres concerning the kingdome of England: yett Ireland, although it have a parlement of their owne, may be bound, by expreſſe words of an act of the parlement of England, or by generall words including the ſame.

The like was antiently of Wales, before the ſame was incorporated into England, and had the privilege of ſending members to our parlement. Several records, and bookes of our law[s], doe teſtify, that the kingdome of Wales (for ſo it is ſtiled) was holden, of the crown of England, by a feudall right: as ſeverall other kingdomes of Europe were; Lombardy, Sicily, Naples, and Bohemia, of the empire; Granada, Leons, of Arragon; Navarre, Portugall, of Caſtile, &c. And in that ſtatute 12 E. 1. the word feudall right is uſed for Wales. Butt they were not eaſily reduced, ſtrugling ſtill for their liberty; yett ſomwhat pacifyed, for the time, by that conceit of this king E. 1. who ſending for his queen Elianor, being with child, out of England[t], to be delivered at

[q] Stat. 3 and 4 P. and M. c. iv. [r] Co. 4 Inſtit. f. 353. [s] 7 Rep. f. 21. b. Calvin's caſe. T. 5. E. 3, 4. Bracton, lib. v. f. 395. Stat. Wall. 12 E. 1. Jure feodali. [t] Hiſtory of Wales, p. 376.

Carnarvan

Carnarvan caſtle; after ſhe was brought to bed of a ſon, the king ingaged himſelfe to the Welch, that they ſhould have a prince moſt free from all kind of blemiſh uppon his honor, and one that could not ſpeake one word of engliſh; meaning this young prince; and by this means ſeemed to ſatisfy the reſolutions of the Welch, never to admit any one for their prince, butt who was their countryman, and borne amongſt them; as this prince Edward of Carnarvan was. In whoſe reigne we find writs [u] for the ſummoning of 24 out of South Wales, and 24 out of North Wales, to conſent to thoſe things which ſhould be ordeined for the common peace of the kingdome, and of thoſe parts: which differed much from the former courſe, where the parlement declared the prince of Wales to be a rebell, for not having done his homage [x].

Many ſevere lawes, in the parlement of England, were made againſt the Welch, in the reigns of H. 4. and H. 5. and the more rigid perhaps, bicauſe they had taken part with their lawfull ſoveraigne, R. 2: which lawes were afterwards repealed, and the nation became quiet when H. 7. their own countryman, obteined the crown. And his ſon H. 8. [y] att the ſuit of his ſubjects of Wales, incorporated that dominion with England: that they ſhould injoy the ſame liberties and lawes as naturall borne ſubjects of England; and ſend knights, and burgeſſes to the parlement. Thus had the ſubjects of Wales their votes, and aſſent, in the paſſing of lawes in the parlements of England; as Berwick alſo had by their burgeſſes. Butt Ireland, and all forrein plantations within the dominion of the king of England, may be bound by perticular, or generall words, in an act of the parlement of the kingdome of England.

[u] 15 E. 2. Rot. clauſ. m. 13. dorſ. and 20 E. 2. m. 3. [x] 4 E. 1. Rot. clauſ. m. 1. dorſ. [y] St. 27 H. 8. c. xxvi.——34 H. 8. c. xxvi.——37 H. 8. c. xxvi.——18 El. c. vii.

CHAP.

CHAP. XX

And of the church of England.

THE king, as head of the church of England on earth, and having the ſoveraigne power in matters uſually termed eccleſiaſticall, as well as in temporall, he ſummons his parlement, to conſulte, among other affayres, perticularly of thoſe which concerne the ſtate and defence of the church of England.

What may be meant by the word church, and whether there ever was any nationall church except that of the Jewes, and of the univerſall catholick church of Chriſt on earth, ſundry learned tracts are extant: and the argument therof deſerves a better and more knowing judgement, and profeſſion, than I can pretend unto, to diſcourſe theruppon; and may fill a larger treatiſe than I intend. I ſhall take the word according to the uſuall acceptation of it, ſignifying eccleſiaſticall affayres, matters pertaining to the eccleſiaſticall body and politie of this nation, wherof the king is alſo the head, and hath juriſdiction therin, as well as in temporall matters; wherof I intend ſhortly and hiſtorically to diſcourſe, out of our hiſtories and records, which doe plentifully evince the ſame.

We may begin [a] as high as our firſt chriſtian king Lucius, whom Eleutherius biſhop of Rome, ſtiles God's vicar within his kingdome. The like title of Chriſt's vicar [b], was aſſumed by king Edgar, in his charter to the monaſtery of Wincheſter: and in his oration to his clergy, he ſaith of them [c] "the examination of all their manners belongs to us."

[a] Sir Jo. Davys Rep. f. 88. a. [b] Not. in Eadmer. Seld. f. 155. 161.

[c] Not. in Eadmer. f. 161.——De quorum omnium moribus ad nos ſpectat examen.

King Ina saith [d], in the preface to his lawes, that he studied the health of the souls of his people, and the common conservation of his kingdome. Then he makes a law [e] for the forme of life of God's ministers; then, for baptising of infants; next, against working on the sabbaoth day; then, touching sanctuary in churches: and many of them are agreeable to the jewish lawes.

King Alured [f] beginnes his lawes with the decalogue; and after that, recites many of the lawes given by Moses; then, the letters of the apostles and elders [g] to the churches of Antioche, Syria, and Cilicia.

The 2 ch. is [h] of the immunity of the church; the 5 ch. [of the peace of the † church] and the 21, [i] against a priest that killes a man, for his confiscation; then, [k] for festivall dayes.

In the league between king Edward and Guthrune, it begins "That before all things, they religiously worship God alone, laying "aside [l] all barbarous worship;" to use which, that law makes it capitall. The 4 ch. is against incest. The 5. against working on the Lord's day. 6. For observation of fast dayes.

Athelsten [m] begins his lawes [by ordering his bishops, &c. to pay tythes and] C. 25. prohibites buryall to a perjured person.

King Edmond begins his lawes, to punish priests for breach of chastity. C. 2. pronounces anathema [n] against those who pay not

[d] Leg. Inae reg.——þæt ymbgenge be þeane hælo unа þ̄pla, & be thana þ̄rathole uner þuce þ̄.
[e] C. i. Be Lobor þe cpena þ̄egole. —— C. ii, iii. Be Cilbum.——Be þunnan bæzer þeoþcum.
——C. iv. [f] Leg. Alured. [g] Acts, xv. 23. [h] Be cyncena þ̄ocnum.
† [Be cyncena þ̄ỳth] [i] Be þ̄þeora zepeohte [k] Be Maerre bæze þ̄þeolþe
[l] Faedus Edward. et Guthruni.——Haethendon. [m] Leg. Athelstani, RS.
[n] Sy he amanþumob.

tithes

tithes and other eccleſiaſticall duetyes. C. 5. That the biſhops ſhall repayre the churches. Then he declares that he conſulted with his councell, how the chriſtian faith might be promoted. Then he makes a law touching marryages.

King Edgar [o] beginns his lawes, concerning tithes and eccleſiaſticall dues. C. 5. is for obſervation of the ſabbaoth day, holy dayes, and faſt dayes. Then follow the canons of king Edgar; which are all touching eccleſiaſticall matters, the demeanor and duety of prieſts, of parents inſtructing the children in the chriſtian faith, to teach them the pater noſter and creed, to abſtaine from filthy and blaſphemous words and ſongs, to obſerve the ſabboth, holy dayes and faſt dayes; that the prieſts doe preach every Lord's day; that chriſtians eat no bloud, nor ſweare. Then is enacted the manner of confeſſion, with the prayers, and impoſing of penance. Then they enact that if a child dye unbaptized, by the default of the prieſt, this law degrades that prieſt. Then it enacts ſatisfaction for ſinnes; then how penance may be redeemed; and laſtly, of the penance of great men.

King Cnute begins his lawes, commaunding all [p] to worſhip one God and to keepe one rule of chriſtian religion: and then, of matters touching the church, and prieſts, whom he exhorts to live godly; then, of unlawfull marryages. C. 8. For payment of tithes and other church duetyes; C. 15. Of the Lord's day; C. 18. An exhortation to confeſſion and penance; C. 19. For receiving the ſacrament; C. 20. Commaunds faithfullnes to God; C. 21. Love and worſhip of him; C. 22. To learne the Lord's prayer and the creed; C. 23. To avoyd ſin; C. 24. Fornication and adultery; C. 25. To

[o] Leg. Eadgari, RS. [p] Leg. Canuti regis.—Lupian.

tremble at God's judgements; C. 26. The duetyes of biſhops and prieſts: and all of them matters purely eccleſiaſticall. Then he [r] forbids barbarous worſhip, and ſuperſtition; and profeſſeth to doe all things for confirmation of chriſtian piety. He degrades and baniſheth prieſts who committ murder, or other great offences. He commaunds obſervation of the Lord's day, holy dayes, and faſt dayes.

Ælfric, in his canons [s], ſaith unto the prieſts, "I tell you, I will "not beare your negligence in your mineſtry:" and all thoſe lawes are concerning the duety of prieſts, and meerly matters eccleſiaſticall.

Four hundred years after Chriſt [t], pope Innocentius confeſſed to the biſhops of Africa, that he had not ſufficient authority to ſend for Pelagius the Briton, who had ſpoken lewd words in derogation of God's grace; and that he ſhould be called by thoſe that were neerer to him: and 200 years after that, [u] when pope Gregory ſent Auguſtin the monke and his fellowes, to convert the Saxons, they ſtayed in the iſle of Thanet till they might know the king's pleaſure.

King Kenulphe [w], by his charter in parlement, exempts the abbot of Abindon from epiſcopall juriſdiction; and graunteth eccleſiaſticall juriſdiction to him. And it was uſuall, both before and after the comming of the Normans hither, for the kings to give biſhopricks [x] by the ring and the ſtaffe, as the inveſtiture.

[r] P. 2. c. v.—C. xi.—C. xxxviii.—C. xlii. &c. &c.

[s] Canones Ælfrici ad Wulfsinum epiſcopum.—N. B. Candour obliges us to own, that this particular quotation makes nothing for the author's argument: for Ælfric (ſuppoſed to be an abbot) writing to Wulfsin (a biſhop) introduces the paſſage, quoted by Mr. Whitelock, with theſe words ——Nos vero ſcriptitamus hanc epiſtolam——quaſi ex tuo ore dictata ſit, et locutus eſſes ad clericos tibi ſubditos, hoc modo incipiens——(M)

[t] Auguſt. epiſt. xcv, xcvi.

[u] Bilſon, differ. p. 41.——Bede, lib. i. c. 25.

[w] 5 Rep. eccleſ. c. f. 10.

[x] Per annulum et baculum.

Edward

Edward the confeſſor, in his lawes, calles himſelfe viccar of the moſt high God; and conſtituted to that end, that he ſhould governe the kingdome and people of the Lord, and above all, the holy church, and defend it from all wrong: which are the words of this writ.

King Wil. 1. although he came into England with the clergye's benediction [y], the pope having ſent him an hallowed banner with one of St. Peter's haires in it; yett when his legat required him to doe fealty, to acknowledge the churche's ſuperiority, he anſwears [z], "Fealty I would not doe, nor will I doe it; bicauſe neither have I "promiſed it, nor doe I find that my aunceſtors did it to your aun- "ceſtors." And he fully manifeſted his own ſuperiority in eccleſiaſti-call matters, by his charter of exemption [a] to Bath abbey, by his diviſion of the biſhop's court from the hundred court, and by appropriating of churches with cure to eccleſiaſticall perſons. So that it ſeemes to be true, which Eadmerus teſtifies of his power [b], "that "all things both divine and humane were att his becke." Alſo the primate of his kingdome he did not ſuffer to direct, or prohibite any thing, butt what was according to his will, and firſt ordeined by him.

When Anſelme [c] aſked leave of William Rufus to goe to Rome, the king told him that no archbiſhop or biſhop of his realme ſhould be ſubject to the pope or court of Rome; and if he aſked this leave any more, or appealed to Rome [d], he ſhould ſpeedily depart out of

[y] Not. in Eadmer. f. 164.——Sir Jo. Davys rep. f. 89. [z] Fidelitatem facere nolui nec volo, quia nec ego promiſi, nec anteceſſores meos nteceſſoribus tuis id feciſſe comperio. [a] Eadmer. f. 165. 167.——7 E. 3.—Quare imp. 19. [b] F. 6.——Cuncta divina ſimul et humana ejus nutum expectabant. [c] Mat. Paris in Gulielm. 2, an° 1094. [d] Anſelm. epiſt. xxxvi. ad Paſchal.

his

his realme: and bicauſe he went thither without licence, all his goods and cattells were ſeiſed to the king's uſe, and he conſtreined to live in baniſhment during this king's life; and could not returne in the time of H. 1.[e] without promiſe to performe the cuſtomes of W. 1. and William Rufus. And when the king perceived that he combined with the pope, to hinder his donation of biſhopricks, the king wrote to the pope, challenging that right; and his proctor in Rome told the pope, that his maſter would rather looſe his kingdome, than the donation of biſhopricks. [f] In his charter to the abbey of Reading, he ſaith, "Wee ordeine, as well in regard of ec-"cleſiaſticall as royall power:" and he forbad the elect of Yorke[g] to come into the realme, bicauſe he received his conſecration att Rome.

In king Steven's time[h], a monke writeth, "that appeals were "not in uſe untill Henry biſhop of Wincheſter, by his miſchiefe, "while he was legate, did cruelly intrude them; and by that meanes "ſome few of them came to have place heere."

H. 2.[i] was a ſtrong oppoſer of the church of Rome, as [appears] in the ſtory of Thomas of Becket, and by the lawes made att Clarendon, abridging the pope's power, forbidding appeales and paying of Peter pence, and that none ſhould bring decrees from thence, to be executed heere, on paine of impriſonment and confiſcation, nor bulls of interdicting the realme, on paine of high treaſon. And

[e] Mat. Paris in H. 1. an° 1104. [f] Co. 5. r. Eccl. c. f. 106.
[g] Mat. Paris, an° 1119. [h] Sir Jo. Davys rep. f. 90. b.——Appellationes in uſu non erant, donec H. epiſcopus Wint. malo ſuo, dum legatus eſſet, crudeliter intruſit.
[i] Gul. Nubridg. rer. Angl. lib. ii. c. 16.——Mat. Paris, an° 1164.——R. Hoveden. f. 496.

though

though he relented a little, when the pope had armed his ſons and neighbours againſt him; yett he made what oppoſition he was able, conſtantly, againſt it, and to aſſert the right of his crown in thoſe matters. In the epiſtle to Coke's 6 rep. his lawes are more att large cited; and by Mathew Paris.

R. 1. [k] gave the biſhopricks; and made the biſhop of Durham, for his money, an earle; drolling, "that of an old biſhop, he had "made a young earle." He graunted great priviledges and exemptions to the clergy of Normandy.

In the time of king John, the power of Rome grew high in this realme [l], by abſolving the people of their oath, and bleſſing ſuch as would undertake a wicked act, to depoſe a rightful king: which courſes brought him to ſurrender his crown to the legat, and to take it againe as the pope's farmer. Butt the barons told the legate, that the kingdome of England never was, nor ſhould be St. Peter's patrimony; and cryed out uppon thoſe ſhriveld ribalds the clergy: [m] and none of his ſucceſſors ever obſerved the forme of his ſubmiſſion. And this king did not only eſteem it his own right, to give the paſtoral ſtaffe; butt graunted to William Marſhall and his heirs [n] the donation of the paſtorall ſtaffe of the abbey of Nutley; the which was a meere ſpirituall right.

In H. 3. time [o], prohibitions were frequent: and to write to the biſhop, to certify the loyalty of marryage, baſtardy, &c. And when

[k] Mat. Paris, p. 154. 50.——Juvenem feci comitem de epiſcopo veterano.
[l] Mat. Paris, 1213. 1216. [m] Polidore Virgil, lib. xv. in Joh.
[n] Not. in Eadmer. p. 143.——Donationem baculi paſtoralis abbathiae de Nutlega.
[o] 3 H. 3. Prohib. 13.——4 H. 3. and 15 H. 3. Prohib. 15. 22.——Rep. 5 eccleſ. c. f. 11.

the

the biſhops required the Lords conſents[p], that ſuch as were borne afore matrimony ſhould be legitimate as well as thoſe borne within matrimony, bicauſe the church accepts them as legitimate to inheritance; the barons anſweared, "We will not change the lawes of "England."

In this king's time[q], are ſome records (yett extant) forbidding men to be drawne in plea out of the kingdome.

His ſon E. 1. did much recover the right of the crowne in eccleſiaſticall matters. He would not ſuffer thoſe of the clergy[r] to goe to Rome without his licence. In the ſtatute de bigamis[s], they expound the councell of Lyons; reſolve no ayde of the pope. In his time, the ſtatute of mortmain[t] was made; which much impayred the greatnes of the clergy. He forbids proviſions[u] of the pope, without his knowledge: and ſhortly after, was the ſtatute of Carliſle made; which recites the uſurpations of the pope in giving eccleſiaſticall benefices to aliens, and enacts that the ſaid oppreſſions, grievances, and damages, ſhall not be ſuffered. He denyed William of Nottingham[w] to proſecute his appeal to Rome, bicauſe it would infringe his priviledge; butt bad him to enter it heere, if he would. He ſetts a penalty uppon the proviſions[x] of appropriations. And he was cited by the pope, to appeare before him[y]. The great councell were highly offended att it; and wrote back to the pope, that it was notorious, that the king of England was not to appeare before him or any other; and ſaid, that although the king would,

[p] 20 H. 3.——Stat. mortm.——Nolumus leges Angliae mutare. [q] 45 H. 3. Rot. clauſ. m. 14. dorſ. [r] 1 E. 1. Rot. clauſ. m. 5. dorſ. [s] 4 E. 1. c. v.——P. 5 E. 1. In recept. ſcac. coram re. [t] 7 E. 1. Stat. mortm. [u] 11 E. 1. Rot. fin. m. 5.——13 E. 1. c. xxxii. [w] 18 E. 1. Petitiones coram re. f. 3. [x] 18 E. 1. Plees in parl. [y] 28 E. 1. In ſcaccar.

yett

yett he could not doe it. He denyes the pope's bulles [a], and Peter pence, and other exactions of Rome. He would not licence his biſhops to repayre to the generall councell, till they tooke an oath [a], not to receive the pope's bleſſing; regarded not his prohibition of his war againſt Scotland; prohibited the payment of firſt fruits to the pope; ſeiſed the temporalities of the clergy, for refuſing to pay a tenth, though the pope forbad them. In his time [b], it was adjudged treaſon, for one ſubject to bring in a bill of excommunication againſt another; and a high contempt againſt the crown, to bring in bulls of proviſion, or brieſes of citation; and the archbiſhop of Yorke had all his lands ſeiſed into the king's hands, and loſt during his life, for a contempt, in refuſing to admit the king's clerk to a benefice, againſt the pope's proviſion; and this held to be by the common law of England.

In E. 2. time, was ſomwhat more favour ſhewed to the clergy; as by the ſtatute [c] entitled, 'Articles for the clergy' may appear: yett in them the right of the crown and parlement, as to thoſe matters, is likewiſe manifeſted. And this king, by his letters [d], civilly intreated the pope and cardinalls, not to hold plee of things done in England, att Rome.

Where att the councell of Vienna held 4 E. 2. [e] the pope, out of the fullnes of his power, diſſolved the order of templars, and gave their lands to the hoſpitalers, a reſolution was had, "That in point

[a] 33 E. 1. Lib. apud turrim, f. 114.——35 E. 1. Ib. f. 140. et rot. pat. m. 25.

[a] Sir J. Davys rep. f. 95. [b] 30 E. 3. Lib. aſſiſ. p. 19.——Br. praem. 10.——5 Rep. eccleſ. c. f. 12.——19 E. 1.—Quare non admiſ.——39 E. 3.

[c] Stat. 9 E. 2. per tout. [d] 14 E. 2. Lib. apud turrim, f. 85. [e] An° 1311.——Quanquam de jure non poſſumus, tamen ex plenitudine poteſtatis noſtrae, &c.

" of law and conſcience, the lords of the fees might enter into " thoſe lands, notwithſtanding the act of the councell, and guift " of them to the hoſpitalers:" to prevent which, the ſtatute of templars [f] was made in our parlement. And though in his time the eccleſiaſticall courts held their pleas [g] by the ſtatute de Circumſpectè agatis, and by generall allowance and uſage, yett they thought themſelves not ſafe, till the parlement had graunted them juriſdiction in thoſe cauſes; as by the ſtat. of the articles of the clergy [h] before cited. And it was objected againſt this king, as one of his great defaults, that he had given allowance to the pope's bulles and authority.

Being now come to a more large view, by our records and printed ſtatutes, ſcarce a parlement will be found wherin ſomwhat doth not appear of their authority in eccleſiaſticall affayres; to recite the perticulars wherof, would prove tedious: I ſhall mention ſome of the principall. In the minority of E. 3. and the heate of his warres in France, the pope ſent many briefs, and bulles into England, att which both the king and people were much grieved, and did wholly oppoſe them; and by the reſolutions of the judges [i], and of the parlements in his time, they admitted no juriſdiction of the court of Rome heere, butt puniſhed thoſe who did bring any bulls from thence, or obteined any proviſions of benefices and the like. And this king aſſumed his own right in the ſupremacy eccleſiaſticall: which appears by many ſtatutes and judgements in his reigne; perticularly by the ſtatute of proviſors [k], which recites the ſtatute of Carliſle, that the church of England was founded in the eſtate of praelacy, by the kings and their predeceſſors, and the nobles and

[f] 17 E. 2. Stat. templarior. [g] Sir Jo. Davys rep. f. 95 b. —— Co. 5. r. eccleſ. c. f. 13 b. [h] St. articuli cleri, 9 E. 2. [i] Co. 5 rep. eccleſ. caſ. f. 15, 16, 17. [k] 25 E. 3 ſt. proviſors.

their

their aunceſtors. And this ſtatute, and that two years after [l], forbidding proviſions of benefices by the pope, fully teſtify the autho rity of the king and parlement in theſe matters of the church: and ſo doth another ſtat. [m] forbidding thoſe to be curſed who ſhall execute the former lawes. In our law annales, we alſo find reſolutions to the ſame effect [n]; as, that the king may exempt any eccleſiaſticall perſon from the juriſdiction of the ordinary, and may graunt him epiſcopall juriſdiction (as he did to the religious houſes founded by him) and that a priour [o] being the king's debtor, may ſue an eccleſiaſticall perſon for tithes in the exchequer: for untill a ſtatute of this king [p], right of tithes was determinable at the temporall courts, and in many mannors of the king and other lords, they had probate of willes. He tranſlated cannons fecular [q], into regular and religious; and made the priour and covent of Weſtminſter, who were regular, and mort in lawe, capable to ſue and be ſued.

In the nonage of R. 2. the power of Rome againe incroached by ſending hither bulls briefs and legates; wherof the people were ſo impatient, that they offered to live and dye with the king, in withſtanding this forein uſurpation. In his time [r], it was made death to bring any ſummons, excommunication, &c. againſt thoſe who execute the ſtatute of proviſors: and another ſtatute makes it a praemunire [s] to purchaſe or purſue, in the court of Rome, or elſewhere, any tranſlations, proceſſes, and ſentences of excommunication, bulls, inſtruments, or any other things which touched the king; againſt him, his crown, and regalty, or againſt his realme. And yett,

[l] 27 E. 3. Stat. proviſors, c. i. [m] 38 E. 3. c. i, ii, iii. [n] 17 E. 3. c. xxiii. [o] 38 Aſſiſ. p. 20. [p] 38 E. 3. c. vii.——Co. 5 rep. eccleſ. c. f. 16. [q] 38 Aſſiſ. p. 22.——49 E. 3. Lib. aſſiſ. pt. 8. [r] 13 R. 2. c. iii. [s] 16 R. 2. c. v.

againſt this king it was one of the objections, that he had allowed of bulls from Rome.

In H. 4. time (as in the time of the precedent king) were ſundry reſolutions of the judges [t], expreſſely diſallowing the pope's authority heere: and a ſtatute makes it a praemunire, to purchaſe bulls from Rome; and another act forbids the horrible miſchiefs and damnable cuſtomes in the court of Rome, about compounding with the pope's chamber for firſt fruits; and another ſtatute makes it alſo a praemunire, for any perſon to put in execution heere bulls obteined for the diſcharge of diſmes.

In the time of H. 5. [u] an act gives power for ordinaries to inquire of the grievances of hoſpitals; another, to inquire of hereſyes; and another makes it a praemunire, for one by colour of proviſions from Rome, and licences theruppon, to moleſt any incumbent. In this king's reigne, the lands of religious houſes were in ſome daunger to be taken away, by the authority of the parlement, from them [w]; the king being importunately petitioned to ſuppreſſe them, bicauſe they being ill uſed, were made the nurſeries of idlenes, gluttony, lechery, and pride; that their revenues would bring yearly to the king 20,000*l.* and alſo maintain 15 earles, 1500 knights, and above 6000 men at armes: butt by the policy, and liberall offer of the clergy, to further his title to Fraunce, this buiſnes was then diverted.

In the minority of H. 6. [x] when the commons had denyed the king a ſubſidy, the prelats offered him a large ſupply of his wants, if he would repeale the ſtatute of proviſors: butt Humphrey duke

[t] Co. 5 rep. eccleſ. c f. 22, 23, 24.——2 H. 4. c. iii.——6 H. 4. c. i.——7 H. 4. c. vi. [u] 2 H. 5. c. i.——2 H. 5. c. vii.——3 H. 5. c. iv. [w] Martin Chron. p. 142. [x] Sir Jo. Davys rep. f. 96.

of Glouceſter, who not long before had caſt the pope's bull into the fire [y], cauſed this motion to be denyed. In this king H. 6. reigne, it was adjudged [z], that the pope's excommunication is of no force to diſable any man within England, by the common law; and that the king only may graunt or licence to found a ſpirituall incorporation.

In E. 4. time, the judges reſolved [a] that the pope could not graunt any ſanctuary in England, and that if one ſpirituall perſon ſue another in the court of Rome, where he might have had remedy before his ordinary, he ſhall incurre a praemunire; that the pope's excommunication is of no force in England: and when two legates came into England one after another [b], they would not be admitted, till they had firſt taken an oath to attempt nothing againſt the king or his crowne.

In Richard the thirde's time [c], it was reſolved that a judgement or excommunication in the court of Rome, did not prejudice any man in England.

The like reſolutions were in H. 7. time [d]: and by a ſtatute †, power is given to ordinaries to puniſh prieſts; an high act of the exerciſe of eccleſiaſticall power! He is ſaid to be a mixt perſon [e], having both eccleſiaſticall and temporall juriſdiction: and the next year it was reſolved, that the king might diſpence with the eccleſiaſticall law for pluralities, and for a baſtard to be made a prieſt.

[y] L. an. 1. H. 7. f. 10. [z] 8 H. 6. f. 1.——9 H. 6. f. 16. [a] Lib. an. 1. H. 7. f. 20.——9 E. 4. f. 3. Fitzh. N. B. f. 44. 12 E. 4. f. 46.
[b] 1 H. 7. f. 10. [c] 2 R. 3. f. 22. [d] 1 H. 7. f. 10. † 1 H. 7. c. iv.
[e] 10 H. 7. f. 18.—Perſona mixta. 11 H. 7. f. 12.

His

His ſon H. 8. went through with the work of aboliſhing the power of Rome in England: the occaſion therof hath bin touched in another place. It chiefly begun 24 H. 8.[f] when a ſtatute was made, reciting that the knowledge of eccleſiaſticall cauſes, by the goodnes of princes of this realme, and by the lawes and cuſtomes of the ſame, appertains to the ſpirituall juriſdiction; it enacts that they ſhall be definitively determined within the king's juriſdiction, and not elſewhere; and, to procure from Rome, or other forein court, any appeals, proces, ſentences, &c. is made a praemunire.

The next year it is enacted[g], that the king may aſſigne 32 perſons to examine the cannons, and to continue ſuch of them as they thinke fitt, and to reſtraine the reſt; no firſt fruits to be paid to Rome; biſhops to be conſecrated in England; no impoſitions to Rome; no diſpenſations from thence, but by the archbiſhop heere; the king and his councell may reforme indulgences; none to goe out of England to generall councells.

The next year, enacted[h] that the king ſhall be ſupreame head on earth of the church of England, and correct all haereſies, and offences; and the firſt fruits of all ſpirituall dignities ſhall be payd to him, and not to Rome.

In the 16 year of this king[i], cardinall Woolſey, by licence from the pope, ſuppreſſed ſeverall religious houſes; and imployed their goods and lands towards the building and indowing of his colledge at Ipſwich, and of Chriſt Church in Oxford. The king followed

[f] 24 H. 8. c. xii.
[g] 25 H. 8. c. xix, xx. 25 H. 8. c. xxi.
[h] 26 H. 8. c. i. and iii.
[i] Grafton, hiſt. of the union of Lancaſter and Yorke, f. 137. 191.

this example of the cardinall (butt without the pope's licence) ſo farre [k], that by parlement all monaſteries were given to him, which had not lands above 200l. by the year.

The next year, a lawe was made [l], that perſons in holy orders ſhall be under the ſame pains with others, for their offences; to extoll or defend the authority of Rome, is made a praemunire; and the oath of ſupremacy is enacted; that all bulls and diſpenſations from the pope ſhall be void, and the effect of any allowable to be confirmed under the great ſeale heere.

Shortly after, by act of parlement [m], all the reſt of the monaſteries of England were diſſolved, and their lands given to the crown; an act manifeſting as much neglect of the romiſh power, and as much ſupremacy in the king in matters of the church, as may be imagined: which was further ſhewed by this king, in the lawes by him made for confirmation of the romiſh doctrine, and the 36 articles; uppon which, great cruelty was exerciſed uppon thoſe bleſſed martyrs, who parted with their lives, to teſtify the true faith of Chriſt.

By this diſſolution of monaſteryes, a great part of the ſpirituall body of the Lord's houſe was excluded; there having bin of that houſe, att one time [n], 65 abbots, 35 priours, and the maſter of the Temple, beſides the biſhops: butt in ſucceeding parlements, the number of the ſpirituall lords was uncertain; ſometimes more, and ſometimes fewer, as they were ſummoned or omitted. And Kellaway [o] reports it to be ſaid by the juſtices, that the king may well

[k] 27 H. 8. c. iii. [l] 28 H. 8. c. i. x. xvi. [m] 31 H. 8. c. xiii.
[n] 49 H. 3. Rot. parl. m. 15, dorſo. [o] F. 184, b.

enough

enough hold his parlement, by himſelfe and his temporall lords and commons, wholly without the ſpirituall lords.

The king's ſon E. 6. proceeded in the buiſnes of reformation, as to the doctrinall part; and his firſt act of parlement [p] impoſed a penalty againſt thoſe that ſpake unreverently againſt the ſacrament, or againſt the receiving of it under both kinds. The next is concerning biſhops and eccleſiaſticall matters; then, about the lands of religious houſes come to the crown; for uniting of churches in Yorke; all former acts concerning the 6 articles, or doctrine or matters of religion, repealed; and it is made high treaſon to affirme that the king is not ſupreame head of the church; all chanteries are given to the king.

The next parlement [q] ordeins the book of common prayer (recited to be made by the aide of the holy ghoſt, and by the travell of the biſhops and other learned men;) the manner of payment of tithes; prohibits eating of fleſh uppon fridayes, ſatturdayes, ember dayes and in lent; for payment of tenths to the king; all lawes prohibiting the marryage of ſpirituall perſons, (who by God's law may marry) are made void.

By the next parlement [r], bookes of popery are aboliſhed, and images taken away, (repealed afterwards by queen Mary;) power given to the king and councell to name 32 perſons to examine the eccleſiaſticall lawes, and to ſett forth ſuch as they ſhall think fitt, not contrary to the common lawes and ſtatutes; the manner of

[p] 1 E. 6. c. i.——C. ii.——C. iv.——C. ix.——C. xii.——C. xiv. [q] 2 & 3 E. 6. c. i.——C. xiii.——C. xix.——C. xx.——C. xxi. [r] 3 & 4 E. 6. c. x.——C. xi.

making

making and conſecrating biſhops and miniſters. In the next parlement [s], people are required to come to church; and the booke of common prayer with ſome alterations is againe enacted; holy dayes, and faſting dayes, and abſtinence from fleſh in lent, not abrogated; the marryage of prieſts made lawfull.

Theſe good lawes were all againe repealed by queen Mary his ſiſter; by whom theſe lawes were made [t]—That ſhe was borne in lawfull matrimony, and all divorces to the contrary repealed; all the ſtatutes made in E. 6. time touching the ſacrament, biſhops, miniſters, uniformity of ſervice, marryage of prieſts, bookes, images, the common prayer, holy dayes and faſting dayes, are repealed; and ſuch ſervice and adminiſtration of the ſacraments as was in the laſt year of H. 8. and no other, to be uſed; a penalty for diſturbing preachers; ſhe may, under the great ſeale, make orders for the governance of cathedrall and collegiate churches; a ſtatute of king E. 6. a° 7. (not printed) wherby the biſhoprick of Durham was diſſolved, and the lands therof given to the king, is repealed; an act of 5 R. 2. for arreſting of hereticall preachers, of 2 H. 4. c. xvi. for repreſſing of hereſies, and of 2 H. 5. c. vii. for ſuppreſſing hereſy and lollardy, are revived; (butt this act was repealed by 1 El. c. i.) all acts made againſt the ſee of Rome are repealed; (and although in this act this was held fitt to be done, yett the clergy thought fitt to petition the king and queen that the lands and goods of the clergy, late diſperſed among the temporalty, might ſo remaine; the clergy preferring the publick peace, before their private commoditie, with which, cardinall Poole thought good in wiſdome, to diſpence; and that was ſo confirmed by the parlement, and the ſtatutes for aſſu-

[s] 5 & 6 E. 6. c. i.——c. iii.——c. xii. [t] 1 Mar. c. i.——c. ii.——c. ix.——c. iii.——c. viii.——2 & 3 P. & M. c. iv.

rance of them:) first fruits to the queen to cease, and she renounceth ecclesiasticall livings.

Queen Elizabeth restores all againe, in order to the reformation[u]. She repeals the stat. 1 & 2 P. & M. c. viii. and revives the statutes of her father for taking away the power of the see of Rome. And revives the statutes of her brother 1 E. 6. c. i. and repeales the statutes 1 & 2 P. & M. c. vi. aboliſhes forein authority, annexeth ecclesiasticall jurisdiction to the crown, and hath power to assigne commissioners to exercise ecclesiasticall jurisdictions, and enacts the oath of supremacy; praemunire to continue in force; no matter of religion made by this parlement shall be judged heresy or scisme; the act of 1 M. c. ii. repealed, and the booke of common prayer of 5 & 6 E. 6. c. i. established to be used; all persons to resort to church; first fruits and tenths are restored; penalties are imposed for mainteining the authority of the see of Rome; persons to take the oath of supremacy; fasting dayes to be kept; that the bible and common prayer be translated into welch; for consecrating of bishops; confirmeth the booke of common prayer, according to 1 El. c. ii. A prohibiting[w] of bulls from Rome, and against absolving or reconciling any person to that see, and against bringing in of agnus Dei, pictures, crosses, &c. ministers to subscribe the articles agreed on for confession of faith, &c. and reformation of disorders in ministers; it is made treason to withdraw any from the religion established, to the romish religion, or to be reconciled or withdrawn; against saying or hearing of masse; penalty for not comming to the church; divine service permitted in one's house, according as it is established, and

[u] 1 El. c. i.——c. iv.——5 El. c. i.——c. v.——c. xxviii.——8 El. c. i.

[w] 13 El. c. ii.——c. xii.——23 El. c. i.——27 El. c. i.——c. xi.——35 Eliz. c. i.——c. ii.——39 El. c. viii.——c. xviii.

so

ſo the parties be att their pariſh church 4 times a year; all jeſuits and romiſh prieſts to depart the realme, and not to returne on paine of high treaſon, and to receive them, is felony, and if one knowing it doth not diſcover the ſame, he forfeits 200l. wedneſday no faſting day; victuallers not to utter fleſh in lent, nor on fridayes and ſaturdayes; (this is expired;) for avoiding perills by wicked and daungerous practiſes of ſeditious ſectaries and diſloyall perſons, none are to perſwade others to forbeare comming to church, or to be preſent att any unlawfull aſſemblies, conventicles, or meetings, under colour or pretence of any exerciſe of religion, contrary to the queen's lawes, or if any perſon ſhall for a moneth, forbeare to heare divine ſervice, and repaire to any ſuch conventicles, they ſhall be impriſoned till conformity, which if they doe not within three moneths, after conviction they ſhall abjure the realme; (this ſtat. is ſaid to be continued. 1 Jac. c. 10. butt I can find no ſuch act of that title continued, and if not, then it is expired, nor doe I find it continued in any act of parlement afterwards;) convicted popiſh recuſants are confined to their dwelling-houſes and 5 miles about; deprivations and making of biſhops and deans by the queen is lawfull; a recitall of ſundry ſtatutes, and among the reſt, of one 35 El. entituled, "An act to retaine the queen's majeſtye's ſubjects in their due obe-" dience," (of which title there is no act in that yeare) are continued to the next parlement.

King James proceeded in the courſe of queen Elizabeth: and very many and good lawes were made in his time, touching matters eccleſiaſticall. That [x] all the acts made in queen El. time, againſt jeſuits, prieſts and recuſants be putt in execution, with favour uppon conformity; [y] with ſome additions touching recuſants, and ſeminaries

[x] 1 Jac. c. iv. [y] 1 Jac. c. xxv.——c. xxix.

bejond ſeas. The act of 35 El. heer alſo ſaid to be intitled "An "act to retaine the queen's majeſtye's ſubjects in their due obe- "dience," is continued to the next parlement. No licence to eate fleſh ſhall extend to beefe, veale, porke, mutton or bacon, in lent or uppon faſting dayes. Prayer [z] to be yearly made for delivery of the king, &c. from the gunpowder treaſon. A ſtat. for repreſſing and diſcovering of popiſh recuſants Of convicting them, and penalties on them who ſhall not take the oath of obedience. Treaſon, to practiſe to abſolve or withdraw any from their obedience, and to reconcile them to the church of Rome. 12[d]. a default for not comming to church. Two clauſes in the act 35 El. ſtill intitled "An "act to retaine the queen's majeſtye's ſubjects in their due obedience," (which are the words of the ſtat. touching conventicles,) are repealed, and no more; and in lieu therof, the penalty of 10l. a moneth is impoſed on thoſe who keep in their houſe any ſervant or ſtranger who comes not to church. For diſcovering of prieſts and maſſe, confining recuſants, diſabling them from offices; of their wives, marryages, and baptizing children, and ſending them bejond ſea, diſabling of them; againſt popiſh bookes; crucifixes to be defaced. All to be naturalized, or reſtored in bloud ſhall receive the ſacrament, and take the oaths. Againſt [a] the ſin of drunkennes. To reforme prophane ſwearing and curſing.

In the time of our late ſoveraigne king Charles [b], an act was made to reforme abuſes on the Lord's day; another, to reſtraine ſending abroad any to be popiſhly brought up; a repeal of part of the ſtatute of 1 El. touching commiſſioners for cauſes eccleſiaſticall, and no court to be erected from thenceforth, to have like powers as the

[z] 3 Ja. c. i.——c. iv. [a] 21 Ja. c. vii.——c. xx. [b] 3 Car. 1. c. i.——17 Car. 1. c. xi.——c. xxviii.

high

high commiſſion court had; that perſons in holy orders ſhall not be intangled with ſecular juriſdiction, ſhall not ſitt in parlement, nor be of the privy councell, juſtice of peace, or exerciſe temporall authority by commiſſion.

I may be cenſured to have inſiſted more than was neceſſary on this point: butt perhappes it may be found, in our time, not unuſefull. It is a plaine, true, and ſhort hiſtoricall collection, as to matter of fact, of our kings and parlements treating and determinations in matters concerning the ſtate and defence of the church of England. And uppon the ſame ſubject, I might much inlarge myſelfe in notes of the like, done by princes and councells of other countryes; and that, from very antient times. I ſhall content myſelfe with the recitall of butt a few of them.

It is affirmed [c], by the great maſter of this and other learning, to be out of controverſy and very manifeſt, that the ſame perſons had cogniſance, or when needful might take cogniſance, as well of ſacred as prophane matters togither, without that diſtinction of eccleſiaſticall and civill; and before the law given in Sinai; and moſt perſpicuouſly appearing in the tribunalls ſett up by Jethroe's advice, and in the judgements of Moſes, to whom the appeales were made whether the matter were ſacred or prophane; and that it was ſo with Adam, Seth, Noah, Melchiſedeck, Abraham, and other princes of thoſe times, Melchiſedeck [d] is ſtiled king and prieſt, and Moſes [e] prieſt of prieſts and chiefe king, and alſo prieſt. That the prieſthood was in the firſt borne, as in Melchiſedeck, who is taken for Sem the firſt borne of Noah, and in the reſt of the firſt borne of thoſe times before Aaron, is admitted both by chriſtians and he-

[c] Lib. i. de ſyn. Seld. c. xvi. [d] Gen. xiv. 18. [e] Ἱερεὺς ἱερέων.—— Rex ſummus, item ſacerdos.

brewes: and from the example of the hebrewes (although miſerably depraved) the antient pagans drew their cuſtome to have publique prieſthoods, which were patrimoniall and hereditary. Abraham, and every patriarche or prince, within his territory did alſo exerciſe the office of prieſt: and the like was alſo among the old pagans, where the prince was likewiſe chiefe prieſt. The hebrew word for a prieſt [f] ſignifies alſo the prince of a territory: not that prieſthood made one a prince, or carryed commaund with it; butt that many princes were chiefe prieſts alſo; and ſo the roman emperours [g] were high prieſts likewiſe.

Ariſtotle [h], ſpeaking of the kings in the time of the heroes, ſaith, "they were rulers of matters of war, and of ſacrifices or ſacred "things, except thoſe things which concerned the ſacerdotall func-"tion:" and a little after he ſaith [i], "the king was leader or ge-"nerall of the war, and judge and moderator of divine things, as "to juriſdiction in them." Moſt nations followed the precedent of the Hebrewes, as to juriſdiction in ſacred matters exerciſed by their kings, and ſupream rulers.

Sir Walter Raleigh notes [k], that the leviticall prieſts in the old law never arrogated to themſelves any temporall, or coactive power, nor advanced their miters againſt the crown of Iſrael: and ſure it is, that the ſons of Aaron were alwayes obedient to the ſons of David, and acknowledged them their lords. The firſt (ſaith he) wee reade of, that uſed the advantage of religion towards the getting of temporall power, was (if not Mahomet himſelfe) Abubachar his ſucceſſor; who diſpoyled poor Ayliffe, the nephew of Mahomet and

[f] כהן [g] Pontifex ſummus imperator. [h] Polit. 3. c. xiv.

[i] Στραλεγὸς ἦν καὶ δικαστὴς ὁ βασιλεὺς καὶ τῶν πρὸς τοὺς Θεοὺς κύριος.——Κύριοι δὲ ἦσαν τῆς τε καλὰ πόλεμον ἡγεμονίας, καὶ τῶν θυσιῶν, ὅσαι μὴ ἱερατικαί. (M)

[k] MS. treatiſe of war, f. 29.

heir

heir of his great riches, by this pretence, " that to whom belonged " the ſucceſſion in wiſdome, to him alſo belonged the ſucceſſion in " wealth." And though att this day, the mufty among the Turkes holds all he hath, att the diſcretion of the great ſultan; yett by Abubachar's example, in all ſaracen lands many prophets, or deceivers which gott that name, never reſted 'till they became kings. The ſeriffe of Barbary was one of the laſt, and greateſt; and among others, won the kingdome of Feſſe from his own ſoveraigne. " And whether (ſaith our author) the clayme which the popes lay to their ſupremacy, had not affinity with the doctrine of Abubachar, lett others judge; that their practices to mainteine it have bin ſuitable to thoſe of the ſeriffe, all hiſtorians doe teſtify." Thoſe of the church doe ſhew that the clergy, for 850 years togither after Chriſt, claymed no ſuperiority or juriſdiction; butt left the ſame, and ſubmitted themſelves therin to their own princes, who tooke uppon them the ſoveraignty in theſe matters, and over the perſons which were afterwards called eccleſiaſticall: as the emperors, in thoſe times[l], baniſhed the biſhops; Julius and Liberius by Conſtantius, Boniface 1. by Honorius, Silenus and Virgilius by Juſtinian, Martin 1. by Conſtantine 3. Leo 4. ſubmitted himſelfe in all things[m], great and ſmalle, to the commiſſioners of Lodowick the weſt emperour; and offereth to amend all that is amiſſe, by the prince's judgement. And in the ſtrife between Donatus and Cecilianus[n], the matter and perſons being both eccleſiaſticall, Meltiades then biſhop of Rome, was appointed by Conſtantine, with others, to determine the matter: from whoſe judgement the parties appealing, the emperor appointed new judges, from whom they appealing likewiſe, att laſt Conſtantine decided it, ſitting himſelfe in perſon.

[l] Martin. Polon. in Jul. & Liber.——Platina in Bonifac. 1. [m] Cauſa 2. quaeſt. 7. c. nos ſi. [n] Euſebius, lib. x. c. 5.——Optatus, lib. i. contra Parm. ——Auſten. ep. 162. 166.

[o]Theodoſius the elder, Damaſus, Siricius, and Anaſtacius, complained againſt Flavianus: butt the prince heard, and juſtifyed him. Of Arcadius his ſon [p], Innocentius biſhop of Rome requeſted a councell, for triall of Chryſoſtom's cauſe: butt the petition was denyed, and the meſſengers ſent away with reproach. By Honorius another of his ſons [q], Bonifacius and Eulalius choſen biſhops of Rome in a tumult, were both commaunded to depart the citty: and Bonifacius being reſtored, putt up a ſupplication to the prince for a decree for future elections, which was made by him.

Leo biſhop of Rome [r] made ſuit to Theodoſius the younger, to commaund a councell in Italy, for ſuppreſſing Eutiches his error; butt he appointed it att Epheſus, and would not be perſwaded to reverſe their judgement; butt his ſucceſſor Martian did it, uppon ſupplication of the pope, and commaunded the councell of Chalcedon [s], where himſelfe ſitting in perſon forbad the biſhops to defend or avouch any thing of the fleſh, and birth of our ſaviour, otherwiſe than the nicene creed did containe.

"We commaund (ſaith Juſtinian [t]) the bleſſed archbiſhop of Rome, &c. to obey the law then made." And Gregory 1. [u] writing to Mauritius, uſeth this ſtile, "My lord, my moſt gracious lord, "I your ſervant, and ſubject to your commaund," &c. and makes many ſubmiſſions to the emperor, who overruled him in his epiſcopall juriſdiction.

[o] Theodor. lib. v. c. 23. [p] Sozom, lib. viii. c. 28.——Niceph. lib. xiii. c. 30. [q] Lib. pontif. in vitâ Bonifac.——Epiſt. Bonifac. ad Honor. Auguſt. ——Reſcript. Honor. ad Bonifac. Con. 1. [r] Leo epiſt. 9. 12. 13. 17. 24.—— 43. 50. [s] Concil. Chalced. art. 1. [t] Novel. conſtit. 123.
[u] Greg. epiſt. lib. ii. c. 100.——Id. epiſt. lib. iv. c. 76 & 78.

Agatho,

Agatho [w], biſhop of Rome 680 years after Chriſt, when Conſtantine 1. ſent for ſome learned men out of the weſt parts, to come to the ſixt generall councell, returnes this anſwear: "Your princely "favour mildly commaunding, our baſenes hath obediently fulfilled "that which was by you commaunded." and in another place, ſaith, "All the biſhops of the north and weſt parts, ſervants of "your chriſtian empire," &c.

Leo 4. [x] ſubmitted himſelfe to Ludowick the father; and after confirmed his obedience to Lotharius the ſon; promiſing obedience to their decrees.

In the 20 conſtitutions [y], wherin Juſtinian diſpoſeth of crimes and cauſes eccleſiaſticall, almoſt every ſentence is a commaund; the like in 123, intituled of divers eccleſiaſticall chapters [z]; and the like in the lawes of Conſtantine, Charles, Lodowick, Lotarius, and others. By all which, and many of the like nature which are omitted, it appears, that all the ſubmiſſion and obedience, which ſubjects owe their prince, was acknowledged by the clergy to the emperours, and their new advanced ſupremacy not thought on; which was afterwards rayſed to its height under pretence of holynes, rayſing contentions among princes, taking part with the ſtronger, making uſe of their armes for their own advantage; by excommunicating Leo 3. [a] for caſting down of images, Frederick and H. 4. by Hildebrand, for refuſing to yield up to the pope the inveſtiture of biſhops, and collation of eccleſiaſtical dignities: and though [b] he ſubmitted,

[w] Sext. ſynod. act. 4.——Agathon. epiſt. 2. [x] Diſtinct. 10 c. de capitulis.
[y] Novel. conſtit. 3. 5, 6. 16, &c. [z] Socrates, lib. i.——Code, lib. i.——Novel. conſtit. Leg. Franc. lib. i. [a] Sir Walter Raleigh's MS. treatiſe of war, f. 35, 36. [b] Lambard.—Scharp.—Abbas Urſpergens.—Bilſon. differenc.

waiting himſelfe, his queen and young prince, in extream froſt and ſnow, barefooted, and in woollen, att his gates 3 dayes togither yett ſuch was the humility and mercy of this ſervant of the ſervants of Chriſt, that he nothing regarded the pennance and ſubmiſſion of the emperour, his wife and childe, butt perſecuted him, by rayſing one rebellion after another againſt him, incouraging (like a common father) the emperor's own ſons againſt him; and ceaſed not till this poore prince was diſpoyled of his crowne, forced to beg food of the biſhop of Spires, and being denyed it, pined away, and dyed.

Many other princes, who oppoſed or did not aſſiſt their aſpirings[c], were in like manner curſed, and excommunicated by them; and their ſubjects abſolved from their oathes; as to king John of England, Chilperick of France, and divers others; and ſometimes doing the like for princes againſt their ſubjects, which made moſt for the holy advantage; rayſing great ſums, under pretence of the holy wars and for pardon of ſins, and then imploying the money to the pious uſe of rayſing their own ambition; bleſſing of Charles Martell, Pepin, and other princes that aſſiſted their uſurpations, and giving them countryes unlawfully gained from the right lords. By theſe, and the like means, did the eccleſiaſticall ſtate in thoſe times grow up. [d] Yett (as in England and other countryes, ſo in France) the progreſſe therof hath always mett with contradiction, and juſt oppoſition.

† The councell of Epheſus threatened the legates of Rome. The divines of Paris [e] condemned pope John's doctrine, with the ſound of trumpetts; allowing him as little ſupremacy as Charles the french king did; who with the advice of the biſhops, princes, and univer-

[c] Sir Walter Raleigh, ibid. Ciril. mandat. ſyn. Eph. concil. c. xxii.——Lazian epit. c. cclxvii.

[d] Eilſon differ. p. 78.

[e] Gerſ. 4 parte. per. Jo. Manius. de ſchiſm. &

† In apologet.

ſities

ſities of his realme, decreed that the whole church of France ſhould depart from the obedience of Benedict. And Charles 7. att a parlement att Burdeaux [f], made a law called the pragmaticall ſanction, for the perpetuall obſervation of thoſe things which the councell of Baſil had decreed; which curbed and caſhier'd the pope's power; which the pope reverſed, and laboured the king to doe it; butt all the clergy of Fraunce reſiſted him, and appealed to a generall councell. And a little before, in a councell att Tours [g], the prelates of France gave their full reſolution to Lodowick 12. that it was lawfull for him to forſake the pope's obedience, and to deſpiſe his curſes. Butt Philip the fayre [h], before that, clapt the pope's legate by the heeles; and ſequeſtred himſelfe and his whole realme from his obedience; and att length caught the pope's own perſon, and kept him in priſon till he dyed. Att length Francis 1. in his interview with Leo 10. did remit the force of it in the accords [i] of France; which made his ſecretary ſay, that the garland of France was betrayed.

The kings of Spayne, in Caſtile, have ſome limited ſpirituall power [k], by a late priviledge of Adryan 6. graunted to Charles 5. butt, when they ſee their time, they take ſo much as ſhall ſerve their turne; as Philip 2. ſeiſed uppon the temporalls of the archbiſhop of Toledo. When the biſhop of Garanza was apprehended att Rome for new hereſy; and when Sixtus 5 ſent to him, that if he would undertake a war againſt England, he would remit to him all the re-

[f] Naucler. general. 48.——Leland, 1488. [g] Lateranenſ. concil. ſub Leo 10. Seſſio 10.——Chron. Maſſaei in an° 1511. [h] Lazian. hiſt. univerſit. epitom. c. ccxlvii.——Philip de Comines, lib. ix. [i] Concordata Galliae.——Budaeus de aſſe. lib. v. [k] Marinaeus Siculus de reb. Hiſp.——Calibut. Downing, conſt. 3. p. 71.

venues of that biſhopricke during the vacancy of the ſee[n]; the moſt wiſe prince anſweared, that he would receive none of the bountey of his biſhops; and though at home, this power is butt what he pleaſes to take; yett in other his territories it is lawfully as large as another prince: as in Burgundy, and Belgia, he hath the ſame right the king of France once had; as Charles 5. made a ſtatute of mortmaine. "It is not lawfull[o] for any eccleſiaſticall perſons, or ſacred places, to take, or have any immoveable thing, without licence of the prince." And Philip 2. his ſon, publiſhing the councell of Trent in the Netherlands, did not lett it paſſe in all points with the full ſtrength of an eccleſiaſticall law; butt reſtrained it with an expreſſe clauſe, that it ſhould not prejudice any priviledge of the king, touching poſſeſſary judgements, or eccleſiaſticall livings, or nomination therunto[p], and ſurely the kings of Spayne have the like praerogative in Portugall; bicauſe the councell of ſtate in that kingdome had the right of preſentation to all biſhopricks, and abbyes. Sicily[q] hath bin held of the ſee of Rome as a ſpirituall feud; yett there, the kings of Spayne doe not only claim ſupremacy of overſeeing, butt alſo ſuperintendency in doing, in eccleſiaſticall affayres. Poland[r], and Hungary, were by Benedict 7. converted from paganiſme; and theruppon wholly att the pope's diſpoſall in ſpirituall matters; and though the power of the kings of Poland be limited by an election; yett "they appoint and chooſe, att their pleaſure,"

[n] Thuanus, hiſt. lib. lxxi.—Prudentiſſimus princeps reſpondit, ſe nil de ſuo pontifici largiri. [o] Theſaurus polit. Apoteles, 49.—Nullis perſonis eccleſiaſticis, vel locis ſacris, licet ullam rem immobilem, abſque principis licentia, acceptare vel habere.

[p] Hugo Linſcotan. de regno Portugalliae.——Boter. heroic. quaeſt. lib. iii.

[q] Guichardin. hiſt. lib. iv.——Baron. annal. an° 1209. [r] Theſaur. pol. Apoteles, 50.——Herbert hiſt. Polon. lib. ii. c. 7.——Thuanus hiſt. lib. lvi. Dicunt, ſuoq; arbitrio eligunt.

arch-

archbiſhops, biſhops and abbots. And the kings of Hungary uſe the ſame power as the kings of England doe; wherof a canoniſt ſaith, [s] though of right they cannot, yett the kings of England, and Hungary, beſtow benefices by priviledge (as he would have it) from the pope.

Sweden, Denmarke, and the Netherlands have uſed the like power; eſpecially, when they introduced the reformation of religion, and aboliſhing the power of the ſee of Rome. Wheruppon it is ſaid, that Guſtavus 1. of Sweden [t] "aſſerted his countrey, from "the daniſh and popiſh ſlavery."

Scotland hath bin happy, and ſhowed her power in this likewiſe. And of Ireland it is affirmed [u], that there have bin made as many lawes againſt proviſions, citations, bulls and briefs of Rome, as are to be found in all the parlement rolles of England. Beſides, Poyning's law enacts there our ſtatute of proviſors, and all other lawes againſt the ſee of Rome; alſo in the parlement of Kilkenny: and another declares the publiſhing of bulls of proviſion from Rome to be high treaſon.

[s] Guymer. comment. prag. ſanct. tit. de anal. [t] Patriam a danicâ ſimul et pontificiâ ſervitute aſſeruit. [u] Sir Jo. Davys rep. f. 88. b.—10 H. 7. c. v.—32 H. 6. c. iv.—22 H. 6. c. iii.—40 E. 3. c. xiii.—7 E. 4. c. ii.—16 E. 4. c. 4.

CHAP.

CHAP. XXI.

We have ordeined.

THAT publique councells are to be ſummoned is naturall, and needles of diſpute: and that it is moſt proper for the king or head of thoſe councells to commaund and iſſue ſuch ſummons in his name, is the right and duety of the king of England; and of all other princes and heads of thoſe councells, appears by the generall practiſe of all countryes.

No aſſembly of perſons can be brought togither att one time and place, butt by perticular warnings, and ſummons for their appearance; the appointment wherof, both in England, and elſewhere, hath conſtantly bin by the prince or head of them, except uppon ſome accidents or defection, in the flames of warre or exigency.

As in our civill warres in England, the victors uſually ſummoned a parlement, yett in the king's name; as that great meeting att Oxford, ſummoned by direction of the barons, which ſome hold rather to have bin a councell of war for preparation againſt the king, than a parlement, and was in the time of civill diſcord.

The parlement ſummoned in R. 1. time, was he being in captivity, and for his releaſe. That in the beginning of E. 1. was, when the king, att the death of H. 3. his father, was in the holy land, and came not into England in almoſt two years after: in the mean time the great lords att home found it neceſſary to call a parlement in the king's abſence, that the peace might be preſerved, and the king's ſucceſſion to the crown be thereby eſtabliſhed. So whileſt king John of Fraunce was deteined priſoner in England, in his abſence,

ſence, and for his redemption [a], his ſon did "aſſemble the three eſtates, att Paris."

The trienniall parlement was enacted [b] to be ſummoned by writ without the king's warrant; in caſe he omitted the time, or by voluntary elections without any writs; butt the time and conſequences therof may be griefe enough to remember.

When the Iſraelites mett in councell without ſummons from their head Joſhuah [c], it was to war againſt their brethren, the children of Reuben, Gad, and Manaſſeh, uppon a miſtake; which being rectifyed, the miſeries threatned by that meeting were avoyded.

That aſſembly uppon the ſummons of the levite by the twelve pieces of his concubine [d], was att a time when there was no king in Iſrael; and uppon a horrid accident, which cauſed the civill war then undertaken.

When the elders of Iſraell [e] gathered themſelves togither without ſummons from Samuel, and came to him to Ramah, the buiſnes was not ſucceſsfull; nor that of the people's coming to Reboboam [f] without ſummons, and the iſſue was a defection from him.

So it was in the caſe of Sigiſmond king of Poland and Sweden; when the eſtates were ſummoned without him, it proved a defection from him.

[a] Haillan, f. 109.—aſſemble a Paris les trois eſtats. [b] 16 Car. 2.
[c] Joſ. xxii. 12. [d] Judges xix. and xx. 1. [e] 1 Sam. viii. 4.
[f] 1 Ki. xii. 3.

Butt

Butt when the people came togither [g] to make David their king, there was none to give them ſummons. So when the kings of England have bin in captivity, abſent, ſicke, or under age, parlements have bin ſummoned without their perſonall direction; butt in their names, or by commiſſion from them. And although ſeverall acts have bin made for the holding of annuall parlements, or oftner if need be; yett thoſe were like as other parlements to be ſummoned by the king, within the times limited; and the writs to be iſſued in his name.

Our hiſtorians bring this right of the king to ſummon parlements as high as to Brute himſelfe, who (they ſay) [h] did aſſemble the elders of the people in councell; and in all ſucceeding times, the ſame hath bin obſerved, as our ſtories, records, and writs of ſummons doe ſufficiently teſtify, wherof there will not be occaſion of diſpute.

Coke [i] cites one, deſcribing the parlement, among other things to note, "That it is not held att certain times, butt ſummoned by the "king, when he thinkes fitt:" the ſame is obſerved [k] by Polydore Virgil. Every king in the beginning of his reigne uſeth to hold a parlement, and afterwards, "as often as the occaſions did require, he ſummoned them att his own pleaſure." My lord Elleſmere [l] publiſheth the ſame doctrine in his ſpeech uppon the caſe of the poſt nati. "Certaine it is (ſaith he) it hath bin the wiſdome of the kings of this realme to reſerve in themſelves that ſupreame power to call their nobles, clergy, and commons togither, when they ſaw great and

[g] 2 Sam. ii. 4. [h] Galfr. Mon.—Majores natu convocavit. [i] Epiſt. 9 rep.—Statis temporibus non habetur, ſed à rege pro arbitrio indicitur. [k] F. 477. h. 1.—Quoties res poſtulat, ſuo arbitratu illud ipſum convocat. [l] F. 110. c. of the poſt-nati.

urgent cauſes. And the ſame is acknowledged [m] in the preamble of the act for the trienniall parlement, that the ſummoning of parlements is a right belonging to the king, and hath bin ſo in his praedeceſſors. And it hath ſcarce bin otherwiſe in any nation. Among the Ebrewes we find many inſtances of ſummons of publique councells, by the prince or head of them, and that both before [n] and after the inſtitution of the great ſanhedrim; as when God ſaith to Moſes, "Goe and gather the elders of Iſrael togither:" and when Moſes and Aaron aſſembled all the congregation togither; and when the Lord ſaid unto Moſes, "Thou ſhalt gather "the whole aſſembly of the children of Iſrael togither."

In the inſtitution of the great ſanhedrim Moſes is commaunded [o] by God, "Gather unto me 70 men of the elders of Iſrael." The like was done by his ſucceſſor. Joſhua called for all Iſrael, and for their elders, and for their heads, and for their judges, and for their officers, &c. and in the next chapter, Joſhua gathered all the tribes of Iſraell to Shechem, and called for the elders, &c. So Samuel aſſembled the people unto the Lord, in Mizpeh. And ſo David aſſembled all the elders of Iſrael, and all the princes of Iſrael. And Solomon all the elders of Iſrael. And Jehoiada gathered the levites and the chiefe of the fathers. And Joſiah ſent and gathered to him all the elders of Judah and of Jeruſalem. We find a patterne of our writs of ſummons where Hezekiah ſent to all Iſrael and Judah, and wrote his letters to the people, to meet to adviſe

[m] 16 Car. 1. c. [n] Exod iii. 15, 16. and xix. 7, &c.——Num. i. 17, 18.——viii. 9. [o] Num. ii. 16.——Joſ. xxiii. 2.——xxiv. 1.——1 Sam. x. 17.—— 1 Kings, viii. 1.—— 2 Chron. v. 2.——xxiii. 2.——2 Ki. xxiii. 1.—— 2 Chron. xxx. 1, 2.——Acts, xxii. 30.

about a great buiſnes, the celebration of the paſſeover. Of the like nature was that ſummons by the chiefe captain, or pro-rex, ſett over the Jewes by the Romans; of whom it is ſaid, that he commaunded the chiefe prieſts and all the councell to appear, and brought Paul downe, and ſett him before them.

Thus Abimelech is ſaid to call, that is † to ſummon his ſervants; whom expoſitors agree to be his counſellors. Thus the Graecians and Romans had their councells ſummoned by their kings, and chiefe officers. So it is in Germany, Sweden, Denmarke and thoſe northerne countryes; ſummons of their publique councells is by letters from the emperor, or king, who appoints the calling of them.

The parlement of Scotland is appointed [p], and ſolemnly called by the king, att his pleaſure. And in Ireland they are called att the pleaſure of the kings of England, and uſually by the deputy there.

In France their publique councells were alſo ſummoned att the pleaſure of the king, as appears [q] by that law, "That the three "eſtates cannot aſſemble themſelves, butt by our letters patents:" when the king pleaſed to call them, they were to meet, and not without his ſummons.

The like courſe was held [r] as to the antient publique councells of Arragon, they were ſummoned att the pleaſure of the king, and

† Gen. xx. 8. [p] Cambden Scotland, f. 7.——Ireland, f. 72. [q] Code Henry, lib. xx. tit. 2. ley 2.——Les trois eſtats ne pourront eux aſſembler, ſi ce ne ſoit par nos lettres patentes. [r] Reſp. Hiſpan. f. 122.——Comitia Arragoniae à quoquam alio praeterquam ab ipſis regibus haberi non poſſunt.

could

could not be called by any other; and forty days are allowed for the appearance of the members ſummoned.

Butt to enter into a recitall of more perticulars uppon this argument, would be unneceſſary: the courſe is ſo well knowne, and ſo univerſally practiſed in all countryes, for the king or head officers to ordein the meeting of publique councells and aſſemblyes, as it is with us in England, that I ſhall forbeare to inlarge uppon this ſubject.

CHAP. XXII

Our parlement.

IT will be requiſite to know the meaning of this word parlement now made a latine word, in this writ. When we ſay in our expreſſions, the parlement, and in the writ, [a] our parlement, we intend by it the great aſſembly, of the king lords and commons, met in publique councell. We uſe this word for the aſſembly of the king and the three eſtates. "[b] To hold the eſtates," in France, is the ſame thing that was formerly to hold the parlement.

In writs and judiciall proceedings, as in this writ, by [c] "common councell" is meant the parlement; both theſe words being heere uſed for the ſame thing: and that which we, and the Scotts, agreeing doe name a parlement, the French doe call "the eſtates [d], and "the aſſembly of the eſtates;" bicauſe with them, as with us, the eſtates of the land doe meet in councell. And whether lawes be ſaid to be made by the king and his barons, his diſcreeter men, by common conſent, by common councell, by the wiſe men, by the councell, and the like; it is therby meant, that they are made by parlement.

Some ſtatutes [e] ſeeme to paſſe under the name of the king only; yett were made with the aſſent of the other eſtates, and comprehended under the names of acts of parlement.

[a] Quoddam parliamentum noſtrum. [b] Minſhaw verbo parlement.——Du Haillan, f. 185.—Tenir les eſtats. [c] Commune concilium. [d] Les eſtats, l'aſſemblée des eſtats.——Lamb. courts, f. 234.——f. 271, 272.
[e] Stat. Glouceſt. 6 E. 3. 3 E. 1. et al. in 8 rep. Prince's caſe.

Other

Other ſtatutes[f] acknowledge that of Glouceſter to be made by the more diſcreete men of the realme; and the other, by the king calling togither the earles, barons, and his councell. It is noted by Brooke, that although magna charta, and other ſtatutes, doe run in the name of the king only; yett the other two eſtates[g] are ſupplyed in good underſtanding; and they are knowne by the name of acts of parlement.

Some difference hath bin of opinion[h], whether by the word "councell" be meant the parlement; as where ordeil is taken away, the record is, "It was provided by the king and his councell," whether this is by act of parlement? wherof Spelman that learned knight[i] makes a doubt, that "the word parlement doth not pro-"perly carry the meaning of it." Sometimes "the king and his "baronage" is taken for, and meant the king and all his ſubjects, or the whole parlement repreſenting them; and ſo it comes from "baron," as it interprets a man or tenant; the king and his men, as it is ſaid of Abimelech and his ſervants: and if the parlement be intended by "the king and his baronage," it may be meant as well by "the king and his councell."

The ſtatute of the templers[k] is, "that the great men of the "king's councell being called togither," as well juſtices as laymen in parlement: and in ſeverall other acts of parlement † the word

[f] Stat. Weſtm. 13 E. 3.——Stat. Quo warranto. 20 E. 3. [g] Mirroir of juſt. c. i. §. 1. [h] Abbot of Strata Marſelles, c. ix. rep.——Proviſum fuit per regem et concilium. [i] Spelman gloſſary, f. 396.—Parliamenti nomine non proprie continetur.——Rex et baronagium ſuum.——Tit. hon. Seld. f. 278.——Gen. xx. 8.——Rex et baronagium.——Rex et concilium. [k] 19 E. 2.—Convocatis majoribus de concilio regis. † 8 R. 2. Tit. avowry, 260.——H. 3. E. 1.

councell

councell is uſed, and does juſtify the opinion, ‡ that when we ſpeake the word parlement, we meane therby the ſame thing which antient authors, records, and hiſtories doe terme the generall councell, the great councell, the common councell, &c. And the ſaxon names for their great councell did ſignify the ſame thing as parlement doth with us: and thoſe councells called by the names before remembred, and many others of the like nature are meant by the word parlement, and comprehended under that expreſſion.

From whence this word parlement is derived may be alſo requiſite to be knowne, for the better underſtanding of matters relating to it. The words parlement, parliament, and parlament are ſynonima, and promiſcuouſly uſed by us in our engliſh expreſſions, for the ſame thing, our great publique councell of the nation.

That derivation of parlement[l] from the lamentation of the peeres when they meet togither, is a ſad etimology. More probable that author may confeſſe it to be[m], from the french words "to ſpeake one's minde," which he ſaith is diſliked by Lawrence Valla, uppon what grounds I cannot gueſſe. The Italians uſe the word parlamento for ſpeech: and the French uſe it in ſeverall ſences; as, "they did treate uppon the rendring of a place—and "the beſiedged did demaund a treaty, or parley," from whence is our engliſh word parley in the ſame ſence: when † the kings of England and France had an interview neare Giſors, there it is ſaid

‡ Co. epiſt. 9 rep.——Spelman gloſſary, f. 314. [l] Lambard's courts, f. 235.—Parliamentum, parium lamentum. [m] Parlement, parler la ment.—— Boccalini pte 2. f. 94, 95, & 328.—On a parlementé ſur la reddition de la place.—— Les aſſieges demandent a parlementer. † Du Haillan, f. 283. b.—La ils parlementerent.

"they

" they conferred togither;" and in another place, ‡that king Richard of England and king Charles of France " did parlement togither." The moſt agreeable opinion to our authors brings the derivation of it from the french word " parler," and that from the Greeke, of the ſame ſignification with parler.

The authority of Coke is[n], that the parlement is ſo called for two cauſes. 1. Bicauſe every member of it hath a judiciall place, and ſhould there, without any ſpirit either of contradiction or ſmoothing, ſpeake his minde. 2. The lawes there made are called acts of parlement, bicauſe they are to be expounded by the judges according to the mind and true meaning of the ſpeakers, the makers of them: as a teſtament ſo called, bicauſe it is according to the mind of the teſtator; and an arbitrement, bicauſe it is according to the mind of the arbitrator. Thus the name of the jewiſh ſanhedrim is ſaid to be an hebraiſme taken from the greeke; ſo is our word parlement an engliſh word taken from the French. And doubtles there can ſcarce be a word for ſuch an aſſembly, or councell, more comprehending the duety of thoſe who are members of it; according to that paſſage of the levite, " Conſider of it, take advice, and " ſpeake your minds;" which the French reade with the word " parlementez."

The Saxons called their publique councells, " [o] the councells of wiſe men and the great councells," and the like; butt ſaith our au-

‡ Parlementerent enſemble.——Lupanus, lib. ii. f. 465.—a verbo francico parler, et hoc a παραλαλεῖν. [n] 4 Inſtit. tit. parlement.—Teſtamentum teſtatio mentis.——Arbitramentum ſecundum mentem arbitratoris.——Haebraiſmum è Graeco ſumptum, συνέδριον ſanhedrim.——Jud. xix. 30.——Penſer ſur cela, conſultez et parlementez.

[o] Jani Angl. Seld. f. 124. Witena ȝemoteȝ, Micil ȝynoteȝ——mutato demùm à Gallis parlamentorum nomine.

thor, " changing att length, from the French, into the name of " parlement." Agreeable to this it is ſayd, [p] " That by a name " not very antient, out of France, it is called a parlement." That this generall publique councell was knowne to the Saxons [q] by the names of " ſynod, great ſynod, great councell, aſſembly of wiſe men, the meeting of all the wiſe men," &c. is agreed by our antiquaries; which proves, that the word " parlement" was not in uſe heere before the norman invaſion; and for the perticular time of introducing it afterwards, there is ſome difference of opinion. My lord chiefe juſtice Coke rectifyes a miſtake, that the word parlement ſhould firſt creepe in about 3 E. 1. in the ſtatute of Weſtminſter 1, where it is called " the firſt generall parlement, by aſſent of the biſhops, " earles, barons, and all the commonaltie," &c. butt our author ſaith truely, " that the word parlement was uſed heere long before " that time:" and in a parlement 9 E. 2. it is ſaid, [r] that wheras long ſince, in the times of our progenitors, kings of England, " in " divers of their parlements," &c. which could not have bin ſaid, if the name had firſt begun in his father's time. That this muſt needs be higher than the time of E. 1. appears, bicauſe the plurall number " progenitors and kings" cannot be meant by E. 2. of his father only; and it is ſaid in a record of E. 1. [s] time, " bicauſe the " people comming to parlements," &c. which being but five years after 3 E. 1. makes it the leſſe probable to be then begun.

[p] Coke, epiſt. 9 rep.—Non ita vetuſto nomine é Gallia mutuato parlamentum dicitur. [q] ſynob, Micel ſynob, Micel gemot, pitena gemote, ealpapine. Cambd. rem. f. 23.——Coke ſupra.——Seld. 2 Tit. hon. f. 613.——Lamb. courts, f. 238.

[r] Co. 8 rep. Princes caſ.——Lamb. courts, f. 236, 237.—In diverſis parliamentis ſuis, &c. [s] 8 E. 1. Rot. clauſ. m. 6. ſched.——Por ceo ke le gens venent al parlement.

Butt

Butt to cleare this, the word is found in Fleta, an authentick author of our law; and in our records [t] before E. 1. time. And our hiſtorians uſe the word as in H. 1. time, "after the manner of "France (ſaith one [u]) they call it a parlement." Lambard holds [w], it was tranſported hither ſhortly after the time of the conqueſt (as he calles it): another holds [x], that the word parlement was uſed heer in the time of Wm. 1. and of Edward the confeſſor; and this ſeemes to have confirmation [y] from ſeveral of our authors. And Sir Roger Owen is of opinion [z], that much of the french manners, language, and names of things was introduced heer by Edward the confeſſor, who had lived ſo long among them, that he was almoſt wholly french.

With the name parlement, ſome would have to be accompanyed the originall of our parlements: the moſt puiſne opinion is of them who will afford our parlement no higher a pedigree than the time of our king E. 1. which they ground from the ſtatute of Weſtminſter 1; which hath bin before touched, and the miſtakes therof evinced, and that our parlements are of much elder date, in the name as well as the originall of them, than this king's reigne.

If the language of France were in frequent uſe with us, before E. 1. time; it is the leſſe probable, that he ſhould be the firſt introducer of any thing, perticularly of the parlement, in reference to that language. I omit the more antient times of H. 1. W. 1. and

[t] 32 H. 3. Rot. clauſ. m. 13, 14. and 34 H. 3. Rot. parl. [u] Polydore Virgil, lib. xi. f. 177.—More gallico parlamentum appellant. [w] Lamb. courts, f. 236, 237. [x] Co. Comment. on Litt. f. [illegible]o and epiſt. 9 rep. [y] Brompton.——Ingulphus.——Mirroir of Juſt. [z] Sir Rog. Owen, MS. c. x. &c.

Ed. the confeſſor, wherof I ſhall have further occaſion to ſpeake; and ſhall heer keepe myſelfe to the times of ſome of this king's neere predeceſſors, when the french language was in great uſe and eſteem with us. Matthew Paris writes, that he was in daunger of loſing his living, bicauſe he underſtood not the French. H. 2. and king Steven were meere French, [a] had large dominions there; and the number of French, and the matches with them, was then ſo great, that one could hardly know who was French, and who Engliſh.

In R. 1. time Brackland writes, that preaching was in the french tounge in England. [b] In king John's time it was accounted as the mother tounge. Uppon the like grounds, and in thoſe times, the engliſh language was in great uſe in Burdeaux, and in other parts of France. And it may more properly be conjectured, that our engliſh language, or cuſtomes were tranſported into France, or that thoſe of France were brought into England by ſome of the progenitors of E. 1. than by himſelfe. Butt this will receive a further diſcuſſion in another place; where it will appeare, that our parlements had not their originall from this king, butt (are) of much higher antiquity. And it might be wiſhed, that no engliſh ſpirits would be ſo treacherous to the honor of their native governement, and countrey, as to intertaine ſuch deſpicable and miſtaken thoughts and ſurmiſes of that, which is ſo great a bulwarke, and defence of their juſt rights and liberties.

Tacitus ſpeakes of ſome, of which number I am not, whoſe fortunes [c] "being augmented by new acquiſitions," could not indure the old formes and lawes; butt were altogether for new conſtitutions,

[a] Gervaſius Tilſberiens. hoc temp.
[b] Giraldus Cambrenſ. hoc temp.
[c] Novis rebus aucti.

as the moſt prudent means to preſerve their new acquired wealth and power. Such uſe to aſperſe our lawes and governement; and calumniate what they doe not, or deſire not, to underſtand, leaſt it might clip the wings of their ambition, and keepe their power within limits; wheras they are more [d] for "the judgement of a "good man," than of good lawes, and have commonly no ill opinion of themſelves: whom I wiſh better informed.

My next ſtep ſhall be touching the original of our parlements from our king H. 1. allowed unto it by ſome authors, moderne chroniclers of our engliſh ſtory; butt no higher will they goe. Their ring-leader is Polidore Virgil [e], who in the life of H. 1. writes with this confidence, and to this purpoſe. "This (ſaith he) I have "expreſſely to ſay, that before this time the kings were not wont "(except very rarely) to cauſe aſſemblies of the people to be made "for conſultation; ſo that rightly it may be ſaid, that this was of "Henrye's inſtitution."

This error is purſued by our chronicler Speed [f], who ſaith that H. 1. laid the foundation of our parlements; and that the engliſh kings in former times ordered the affayres of the common wealth by their edicts, by their officers, and by the governors of every countrey; and ſeldome had the joint advice of their people. This is followed by Martin [g], who affirmes, that H. 1. deviſed and ordered the manner and faſhion of a court in parlement; and this opinion is believed by many.

[d] Arbitrium boni viri. [e] F. 476.——Illud appoſitè dicere habeo, reges ante haec tempora non conſueviſſe populi conventum, conſultandi cauſa, niſi perrarò, facere; adeo ut ab Henrico id inſtitutum jure manaſſe dici poteſt. [f] P. 457. P. 35. [g] Chron. Mart. f. 31.

As for Polydore Virgill, his errors are not a few; and who ſo will take the paines may ſee them, and the correction of them by Sir Roger Owen[h], who ſaith of him, that "his ignorance was "bold, and his boldneſs triviall." He was a reteiner to H. 8. an italian gentleman, who taking uppon him to write of the hiſtories, lawes, and cuſtomes of England, (wherin he was wholly ignorant) borne and bred a ſtranger to them, and taking up on truſt from others what he putt out in his own name, his miſtakes are the leſſe to be wondred att: nor are they in this point alone, butt in ſundry others; as where[i] he ſaith, "that Wm. the conqueror appointed "ſheriffs and juſtices of the peace, erected tenures, and brought in "tryalls by 12 men, &c." when it is apparent by our bookes and records, that the ſame things were in uſe heere long before the time of W. 1. except juſtices of the peace which, Polydor ſaith, were brought in by the conqueror; wheras it is evident by the act it ſelfe, [k] that they were not introduced untill about 300 years after the time of W. 1. by E. 3.

Polydore ſaith in another place, that by the ſtatute 36 E. 3. matters are to be inrolled in Engliſh; which is againſt the expreſſe words of the act, that they ſhall be entred in Latine: many other groſſe miſtakes might be remembred of this author; butt I paſſe them and him by, ſuppoſing his authority not to be much ſwaying. He ſeemes forgettfull of his own expreſſions where he ſaith firſt "perrarò, very ſeldome," which implyes that ſometimes they had theſe councells, before the time of the perrarò; and yett he concludes, with his countrey confidence, that they had theſe councells from the inſtitution of H. 1. only.

[h] Sir Rog. Owen MS. c. viii, ix, x, xi.—Cujus ignorantia audax, et audacia futilis.
[i] Polydor. hiſt. Angl. lib. ix. [k] Stat. 1 E. 3. c. xv.

For

For our own countrymen who abett his error, to the ſtaine of our nation's honor, they are leſſe to be excuſed than the ſtránger; unles their meaning be, that the commons were not in parlement before the time of H. 1. as others alſo have affirmed (which is a convenient time of praeſcription, for their preſence and intereſt in our publique councells). Butt I ſhall have occaſion in another place to ſhow, that this is alſo a miſtake; and that the commons have bin an eſtate in our generall publique councells in all times: and if they have not bin ſo, or poſſibly might not be ſo conſtantly preſent in much antienter times in thoſe councells, as the greater men were; yett th's is no argument for that poſitive aſſertion, "that our publique coun-"cell had its inſtitution from H. 1. and not before." If they intend, that the word "parlement" was coyned in H. 1. time, it is the leſſe error; butt of this is ſpoken elſewhere. It ſeemes, that the ſaxon lawes and hiſtories were not much peruſed by theſe gentlemen; who alleadge that our kings uſed to governe the commonwealth by their edicts and officers, without ſuch councells: wheras nothing was more frequent, in the time of the ſaxon kings, than to hold parlementary councells almoſt yearly; and ſcarce was any matter of importance determined without them; as is evident by all our hiſtorians of that time, and by ſundry of the acts themſelves of thoſe councells yett extant in the ſaxon idiome.

We find, in one of our bookes [l], an act eſtabliſhed att a parlement holden in the reigne of W. 1. pleaded, and adjudged to be good, and putt in execution accordingly. This king W. 1. had ſeverall parlements; [m] one in the 4th yeare of his reigne, another in his 5th yeare, another in his 7th yeare by his brother; the which appear in the ſeverall hiſtorians of thoſe times, and is ſufficient teſtimony, that

[l] 21 E. 3. f. 60. [m] 4 W. 1.——5 W. 1.——7 W. 1.

this

this councell was not first instituted, nor had its originall from H. 1. who having conquered Normandy from his brother Robert, and being a learned king (as his name Beauclerke testifyes) and studious of lawes, as Ivo calles him "a speciall establisher of justice[n]," was so farre from introducing a new forme of governement in England, that he liked it so well as to establish the english lawes in Normandy.

Butt I must hasten to another opinion, which hath waxed more generall and confident in our age, than in former times; that our parlements, lawes and governement, were brought into England by duke William of Normandy, and consequently the originall of them to be from him; and they have divers forrein authors[o], and many of our owne countreymen[p], uppon whose credit and authority they build the confidence of this their opinion. Yet notwithstanding those many and eminent learned authors, cited in the margent, are concurrent in this opinion; I shall for the honour of my countrey, with modesty and submission to others judgements, presume to sett downe the grounds of the different opinion, uppon examination of the ground of theirs. 1. They alleadge that W. 1. is surnamed the conquerour; and that by his conquest he changed the governement, lawes, and councells of this nation; and his successors reckon the beginning of their reignes from the conquest.

"The argument[q] from a may be to a must be will not hold;" as bicause Wm. 1. as a conqueror might change the lawes, therfore

[n] Severius.—Gulielm. Brito.—Armoricus.—Rutelarius, &c. [o] Jovius—Æmilius.—Bodine.—Hottoman.—Dynothus.—Volateran.—Berault.—Berkley.—Choppinus.—Uspargensis.—Malines.—Polydore, &c. [p] Paris.—Malmesbury.—Mat. Westm.—Foxe.—Cosins.—Twyne.—Heyward.—Milles.—Fulbeck.—Cowell.—Ridley.—Browne.—Speed.—Martin, &c. [q] A posse ad esse non valet argumentum.

he

he did change the lawes: the conquering of the land is one thing, the introducing of new lawes is another thing. Butt there is direct proofe to the contrary of this argument. W. 1. never ſurnamed himſelfe the conqueror, nor was ſo called in his life time; as may appeare by all the letters patents, and deeds that he made, yett extant ſome of them, and wherin he is only called "[r] Wm. the "king, duke of Normandy, &c." So our antient hiſtorians call him. In the title of Nubrigenſis booke, he is ſurnamed William the baſtard: Malmeſbury calles him Wm. the firſt; Hoveden, Wm. the elder; in the patent of H. 1. electing of a biſhop, he ſtiles himſelfe Henry the ſon of king William the great; and ſo Malmeſbury calles him. Adam de Meroneth ſaith, [s] that this word "conqueſt" was found out to denote, and diſtinguiſh the certaine Edward; bicauſe two of the ſame name were predeceſſors to E. 3. and to the conqueror who claymed the crown as heir to Edward the confeſſor: butt (ſaith he) "we call him the conqueror, for that he overcame "Harold in battle."

If W. 1. claimed to be king of England as ſucceſſor, and adopted heir of Edward the confeſſor, by his will, and by Harold's renouncing his title by oath; there is the leſſe colour for that argument, that as a conqueror he changed our lawes and parlements.

It appears, that the barons of England did homage to him as a ſucceſſor; and he relyed on the Engliſh in his forein wars. Volaterus writes, that "he was made heir to the confeſſor, and was uncle to "him." Another writes, "[t] that Edward by his will left England "to him." Pope Alexander 2. ſent him a banner, as a wittnes

[r] Willielmus rex, dux Normaniae. [s] 1 E. 3. an° 1327. [t] Paulus Æmilius. — Fulgaſius.

that, with a ſafe conſcience, he might expell Harold the tyrant; bicauſe the crown was due to him by the confeſſor's will, and Harold's oath. And many [u] of our authors are agreeable heerunto, in the ſeverall ſtories of thoſe times. The antient deeds alſo of the abbey of Weſtminſter (wherof I had the cuſtody) do teſtify the ſame.

King W. 1. in his charter to that abbey, ſetts forth his title to the crowne, thus. " [w] By virtue of the graunt of my lord and kinſman, " the glorious king Edward, I William king of England," &c.

His 2 charter [x] is thus, " In honor of king Edward who made me " his heire, and adopted me to rule over this nation," &c.

The charter of H. 1. to this abbey, is, " In honor of Edward my " kinſman, who adopted my father and his children, to be heirs to " the kingdome," &c.

The charter of H. 2. to this abbey is to the ſame effect. In the charter of W. 1. [y] of the liberties of St. Martin's the great, in the MS. therof are theſe words, " In example of Moſes who built the " tabernacle, and of Solomon who built the temple; I William, by " the diſpoſition of God, and by hereditary right of conſanguinity, " king of England," &c. he doth erect a ſanctuary.

The charter of his ſon H. 1. [z] calles himſelfe " the ſon of king " William the great, who by haereditary right ſucceeded king " Edward."

[u] Gemeticenſis.—Walſingham.—Malmeſbury.—Huntingdon.—Ingulphus.—Matt. Paris.—Pike.—Wendover.—Caxtone.—Giſborne MS.—Forteſcue.—Ikham MS.

[w] Beneficio conceſſionis domini et cognati mei, glorioſi regis Edwardi, &c.

[x] 15 W. 1. [y] An° 1088.—Ego Willielmus Dei diſpoſitione et conſanguinitatis haereditate Anglorum baſileus. [z] Lib. Ely.

As

As to his pretence of title by the will of the confeſſor, Mathew Paris ſaith, that " the will was void, the deviſe being without the conſent of the barons." To which Sir Roger Owen anſwears, that probably the law might be ſo in H. 3. time, when Paris wrote; and ſo was taken to be by the ſtatute of Carliſle, and in the caſe of king John. Yett (ſaith he) att the time of duke William's invaſion the law was taken to be, that a kingdome might be transferred by will; as that of Sixtus Rufus, that Aſia came to the Romans by the will of king Atalus [a], the words wherof are; " let the people of Rome be heir of all my goods:" Bithynia came to them by the laſt will of the king Nicomedes, which is remembred by Eutropius, togither with that of Lybia. Cicero in his orations telles us, " that the kingdome of Alexandria, by the laſt will of their king, was devolved unto Rome." And Preſitagus, king of the Iceni in England, did give his kingdome by his will unto the roman emperour. This king W. 1. is ſaid to give England by his will to his younger ſon Wm. Rufus: and king Steven claimed by the will of H. 1. The lords of the councell, in queen Marie's time [b], wrote to her, that queen Jane's title to the crown was good by the letters and will of E. 6. and their father H. 8. had power, by act of parlement [c], to declare by his will his ſucceſſor. And as this caſe was by act of parlement, ſo duke William, after he had conquered Harold, was by the generall conſent of the barons, and people of England, accepted for their king; and ſo his title by will confirmed. However it carried a ſhew of juſtice, and he both claimed and governed the kingdome as an heir, and ſucceſſor; not as a conqueror, but according to the lawes of the nation, which he found heere and confirmed.

[a] Annaeus Florus——Populus romanus bonorum meorum haeres eſto.

[b] Camb. annales q. Mary. [c] Stat. 35 H. 8. c. i.

Our author further affirmes [d], that there is not any of our hiſtorians that lived in the ſpace of 200 years immediately after the Normans invaſion, which doe report our lawes to be taken away, and the norman cuſtoms introduced by duke William: ſome doe ſpeake of the alteration of ſome part of them, and the bringing in of ſome few norman cuſtomes effectuall for the keeping of the peace.

Roger Wendover and Matthew Paris are the firſt of the monkes, who (as our author ſaith) hatched theſe addle egges: butt that the antient lawes and governement of England were confirmed by duke William, is teſtified by many of our writers.

Jornalenſis ſaith, that out of the Merkenlage, Weſt-ſaxonlage, and Danelage the confeſſor compoſed the common law which remains to this day. Malmeſbury, who lived in duke William's time, ſaith, that the kings were ſworne to obſerve the lawes of Edward the confeſſor, ſo called bicauſe he did obſerve them moſt religiouſly. Ingulphus, who was in good favour with W. 1. ſaith in the end of his chronicle, "I Ingulphus brought with me from London, to my "monaſtery (Croyland) the lawes of the moſt righteous king Ed-"ward, which my lord king William did commaund, by his pro-"clamation, to be authentique and perpetuall; and to be obſerved "throughout the whole kingdome of England, uppon paine of moſt "grievous puniſhment: and he commaunded them, in the ſame "language they were written, unto the juſtices; leaſt by reaſon of "ignorance we ſhould happen to breake them." Hoveden writes, "that William the conqueror allowed the lawes of Edward the con-"feſſor; not that Edward was the firſt allower of thoſe lawes, for "they were uſed in king Edgar's dayes."

[d] Sir Rog. Owen, MS. c. xi.

The

The lieger booke of the abbey of Waltham commends duke William, for reſtoring the lawes of the engliſh men, out of the cuſtomes of their countrey; Radburne a chronicler followes this opinion: and theſe lawes of Edward the confeſſor are, for the moſt part, the ſame which are conteined in our great charter.

A MS. intitled (de geſtis Anglor.) ſaith, "that att a parlement att London 4 W. 1. the lawyers were preſent, that the king might heare their lawes, they being formerly uſed in king Edgar's dayes;" and mentions the 12 men out of every countey, to deliver truely the ſtate of their lawes: which is alſo remembred by ſeverall other of our authentique authors; [e] and that he was ſworne to maintaine our lawes.

The proheme of the grand cuſtomary of Normandy, ſpeaking of William the baſtard king of England and duke of Normandy, ſaith, "that St. Edward king of England, having no heire, appointed William to be his heir of England; who, having conquered Harold the uſurper, obteined the kingdome under this condition, that he ſhould inviolably obſerve the lawes given by the ſaid Edward." If then we will believe the french writers themſelves, the charters of W. 1. and his ſucceſſors, the hiſtorians both engliſh and french by the teſtimonies before cited, and by others which will be applicable to another ſubject, and by divers others which for brevity's ſake are omitted; it will not be obſcure, that the originall of the parlement, lawes and governement of England, is not from king W. 1. unduely ſtiled the conqueror.

[e] Hiſt. of tithes. Seld. et Tit. hon. — MS. chron. in biblioth. Cotton. cum lib. Ely. — Regiſt. S^ti Albani. Mat. Paris, &c.

Butt the contrary opinion, or rather fancy againſt the honor of our parlement and lawes is preſſed yett further; that if duke William, as a conqueror, did not introduce att firſt his lawes, and forme of councells heere: yett the Normans who joyned in his enterpriſe, and flocked hither after his ſucceſſe, grew ſo numerous and powerfull, that they would be governed by no other lawes or councells butt their owne; which they fetched out of Normandy, and eſtabliſhed in England.

To this is anſweared, that they did not conquer England, as is ſhewed before: butt admitting they did, yett they changed not our lawes and parlement; wherof that which is ſaid before, and that which followes may give ſome ſatisfaction.

They conquered the iſles of Guernſey and Jerſey, yett altered not their lawes, which are in their locall cuſtomes like unto ours. In Sicily, Naples, and Apulia, where they were conquerors, yett the antient lawes of thoſe countryes were continued.

Between the conqueſt of Normandy itſelfe by Rollo, and the invaſion of England by duke William, there were not above 160 years: that of Normandy was about the year 912, that of England 1060. It is not then conſonant to reaſon, that thoſe norman pagans, diſcended from divers barbarous nations, ſhould, in the time of 160. years, eſtabliſh ſuch excellent lawes, ſo different from the french lawes, and all parts of the world except England; and they to be att the firſt, not only fitt for a dukedome, butt for a kingdome which in thoſe dayes was the ſecond in Europe, for antiquity and worth, by confeſſion of moſt forein hiſtorians.

Beſides,

Beſides, thoſe lawes, which the Normans had before the time of duke William, were quite different from thoſe in the cuſtomary of Normandy, and from thoſe in England: as their law that the huſband ſhould be hanged if his wife were a thiefe, and he did not diſcover it; and they had the tryall of ordeil for theft; the meaner people were ſlaves; and the like. Wigornienſis ſaith, that the Normans who came in with queen Emma, the wife of Ethelred, were ſo hated of the Engliſh for their injuſtice, and falſe judgements, that, in the time of king Canutus, they were for this cauſe baniſhed. It is the leſſe probable, being ſo unjuſt themſelves, they ſhould be the introducers of ſo juſt lawes as thoſe of England are; that ſo cleer ſtreames ſhould flow from ſo corrupt a fountaine, as their originall.

Sabellicus a venetian hiſtorian writes, that the Normans in their manners and cuſtomes are of the engliſh faſhion. And Polydore, forgetting what he had wrote before, ſaith of H. 7. that when a doubt was made uppon the propoſall of marryage of his daughter to Scotland, that therby England might in time be ſubject unto Scotland; this wiſe king anſweared no; and that England, as the greater, would draw to it Scotland as the leſſe, and incorporate it to the lawes of England, as it had done Normandy though the owner therof was conqueror of Harold in England.

Another argument for the opinion, that the originall of our lawes and parlement is from the Normans, is taken from the conformity and likenes of the lawes, and forme of our engliſh parlements, to thoſe in the graund cuſtomary of Normandy, which are almoſt the ſame. A more probable conjecture might be made, that the originall of our lawes and parlements is from the Gothes, Swedes, and thoſe northerne people whoſe lawes, and eſpecially the forme of their

publique councells is, to this day, exactly the ſame as our's was. As to thoſe in the cuſtomary of Normandy, the writer of the praeface to that booke ſaith, that " it conteins only the lawes and cuſtomes which were made by the princes of Normandy, with the counſell of their prelates, earles, barons, and other wiſe men." If this cuſtomary were compoſed after our E. 1. time (as ſome [f] hold it was) then it cannot be that our lawes and parlements ſhould be derived from thence. Butt that was (as ſome hold) a meere tranſlation of our law booke Glanvill, as the booke Regia majeſtas of the lawes of Scotland is; and the like was of the lawes of Burgundy. The firſt eſtabliſhing of the cuſtomary of Normandy is thought to be in H. 1. time; and afterward againe, about the beginning of E. 2.

That H. 1. did eſtabliſh the engliſh lawes [g], in Normandy, hath bin before noted; and that the lawes in the cuſtomary of Normandy are the ſame with the lawes collected by Edward the confeſſor [h]: there is ſome teſtimony from thence, that all thoſe lawes of Normandy came from the engliſh lawes and nation.

In the cuſtomary is a chapter of nampes, or diſtreſſes; and decreed, that one ſhould not bring his action uppon any ſeiſure, butt from the time of the coronation of king Richard: which muſt needs be our king Richard 1. bicauſe no king of France was in that time, of that name; and the words nampes and withernamps were ſaxon termes, taken out of the engliſh lawes, ſigniſying a pawne or pledge, or diſtreſſe. The learned knight [i] ſhowes att large, that livery of ſeiſin, licences, or fines for alienation, daughters to inherit, tryalls by juries, abjurations, utlaries, coroners, diſpoſing of lands by will, eſcheats,

[f] Sir Rog. Owen MS. c. xiii. — Rouile. — Comment. ſup. cuſtom.
[g] Sequerius.
[h] William de Alençon.
[i] C. xiv. (Sir Roger Owen?)

gaoles,

gaoles, writs, wreckes, warranties, catalla felonum and many other parts of our law, and parlements themſelves were in being heere, before the norman invaſion; which is teſtifyed [k] by many of our authors. And which putts it further out of ſcruple, there are yett extant the MS. themſelves of the ſaxon lawes made in the parlementary councells held by them, which lawes are in the language and character of thoſe times, and conteine in them many of thoſe things which are in the norman cuſtomary.

Some are of opinion, that there was a former eſtabliſhment of our lawes in Normandy, before the time of H. 1. and that it was by Edward the confeſſor, who (as all the writers of his hiſtory doe agree) was a great collector and compoſer of our engliſh lawes. He lived a long time in Normandy with his kinſman duke William, who was willing to pleaſe him, in hopes to gaine his favour, that he would appoint him his ſucceſſor; Edward having no childe, and duke William being his neereſt kinſman, and moſt kind to him: and heerin his deſigne and expectation did not fayle him, nor his humoring of the confeſſor prove fruitles. Amongſt other paſſages it is ſaid, that the confeſſor finding Normandy without a ſettled governement, and wanting lawes, the Normans not having bin long there; king Edward adviſed his couſen to receive, from him, the lawes of England which he had collected; and to eſtabliſh them in Normandy: to which propoſition the duke and his lords readily hearkened, and accepted from king Edward the engliſh lawes, and eſtabliſhed them in Normandy for the good of their people; and therby alſo putting an obligation uppon Edward.

[k] Lib. de antiq. Brit. legibus. — Co. 4 inſtit. — Co. on Litt. f. 109, 110. et epiſt. 9. — Seld. — Pim. — Lambard, &c.

Butt

Butt it is then demaunded, how came the lawes in the cuſtomary to be written in French, if they were had from England? The reaſon is given, that Edward underſtood the French as well as the Engliſh; and the Normans were now become French, and underſtood that language butt not the Engliſh; therfore, the more reaſon to have thoſe lawes written in French: and the normans being a rough and martiall people had not many clerkes among them, of their own countreymen, butt made uſe of thoſe French who lived among them, and with whoſe language the Normans began to be incorporated; and theruppon, it is ſuppoſed, the lawes in the cuſtomary were written in that kind of French which that time afforded. Others hold, that the lawes were not then written in French by the confeſſor; butt att the ſecond eſtabliſhing of them by H. 1. that then they were putt into the french tounge.

It is certaine, for the confirmation of this opinion and cleering of it, we find in the proheme of the cuſtomary, which is intitled [l] "the deſcription of Normandy," theſe words; "that St. Edward king of England was the maker or giver of theſe cuſtoms of Normandy:" as it is witneſſed by Chronicon chronicorum, where it is ſaid, "that St. Edward alſo gave the lawes to the Normans when he was long harboured there;" and that Edward made the ſaid lawes of England, and of Normandy, appears (ſaith he) ſufficiently by the uniformity of them; for which he cites ſeverall places, as of appeales [m], "to prove any thing by the credit of 12 men of the vicinage or neighbourhood;" which he ſaith remaines in Normandy. Polydore contradicting himſelfe ſaith, in H. 6. time, that the duke

[l] Deſcriptio Normanniae. — Hujuſce Normanniae conſuetudinis latorem ſive datorem ſanctum Edwardum Angliae regis, &c. [m] Ad probandum aliquid per credentiam 12 hominum vicinorum.

of

of Bedford called togither the chiefe men of all the cittyes of Normandy, and delivered, in his oration to them, " the many benefits which the Engliſh had afforded to the Normans; eſpecially in that the Engliſh gave them their lawes and cuſtomes."

If then we will believe themſelves, and the teſtimonies before remembred, it will be evident, that the lawes, and forme of parlements, were carryed out of England into Normandy; and not brought from thence into England; and conſequently, that the originall of our parlements is not from the Normans.

Yett ſtill, ſome are ſo further zealous to defile their owne neaſt, and to diſparage the lawes and parlements of England, which are their birth right; that though it will not be graunted, that our lawes and parlements were given and impoſed by a conqueror: yett they would have it yielded, that when our kings were poſſeſſors of the greateſt part of France, togither with England, that then the lawes and parlements of France were brought in hither, and became the originall of ours; which they inforce from the french word parlement and bicauſe our lawes, and law bookes, and many acts of parlement to this day and heertofore, were and are in the french tounge [n]. And they remember the ſtatute of E. 3. which recites the miſchiefes of the lawes being in French; and enacts, that thereafter they ſhall be pleaded, &c. in Engliſh, and inrolled in Latine: wheruppon is concluded by ſome [o], that both the french lawes and language were brought into England, and ſettled heere.

[n] Forteſcue. — Ingulphus, &c. — 36 E. 3. c. xv. [o] Lambard. — Polydore. — Speed, &c.

In anſwear wherunto may be offered, that doubtles this was not done by the Normans, as hath bin ſhewed; and the french tounge [p] was not the language of duke William, and his people. The normans not having bin paſt four diſcents in that part of France, it is not probable, that in ſo ſhort a time they ſhould loſe their native tounge, and receive another of a country conquered by them: they came from Sweden, Norway, Denmarke, and thoſe northerne countryes; and therfore were called Normans. And between the languages of thoſe countryes is great affinity, butt none between their dialect and the french. Ulphilus ſaith [q] that the dutch tounge came from the Gothes; Jornandes, that the Gothes tounge came from the Dutch; none ſay, that between theſe and the French is any affinity. The french tounge was uſed in England before the norman invaſion; wherof Beda affirmes, that in the year 640 it was the cuſtome of England to ſend their daughters into the monaſteries of France, to be brought up there; and that Ethelbert, Ethelwulph, Etheldred, and other ſaxon kings marryed into the royal bloud of France. Glabor notes, that before the time of duke William the Normans and Engliſh did ſo linke togither, that they were a terror unto forein nations. Ingulphus ſaith, that the ſaxon hand was uſed untill the time of Alfred, who, being brought up by french teachers, uſed the french hand; and he cites many charters of Edred, and Edgar, written in the ſaxon and french hand; as the booke of Domeſday is. Edward the confeſſor, by reaſon of his long being in

[p] MS. Sir Rog. Owen, c. x.

[q] From whence the author had this ſtricture, doth not appear. For if the gothic biſhop of the name of Ulphilas be here meant, who tranſlated the bible into the language of his countrymen, it is generally underſtood, that we have nothing of his at this day but the broken remains of that work: perhaps there is ſome miſtake of the name in the author's tranſcript. (M)

France,

France, was turned into the french faſhion; and all England with him. W. 1. commaunded our lawes to be written in the engliſh tounge, bicauſe moſt men underſtood it; and there be of his patents in the ſaxon idiome. Yett in all theſe paſſages nothing appears of the french lawes, or forme of parlements, to have bin brought into England in thoſe times: nor could it be, for they were not then in France. Bicauſe the french tounge was much uſed in England, it doth not therfore follow, that the french lawes and parlements were then alſo brought into England: eſpecially when their forme of parlements, their three eſtates ſo like our's, was not with them knowne untill about the year 1300. And doubtles they who are moſt offended att their countrye's honor, will for ſhame, and notorious trueth's ſake, allow a much elder date to the three eſtates, and forme of our engliſh parlements. Hardly any deeds of our kings are in French, before H. 2. time; the moſt are in E. 1. and E. 2. time, before 36 E. 3. concerning which ſtatute, it was naturall for the Engliſh to deſire it. Moſes read all the lawes openly before all the people; and that which concernes the lives, liberties, and eſtates of all, ought to be made knowne to all, in the moſt perſpicuous way that may be. The lawes of the Romans, of Spayne, France, Sweden, and moſt other countryes were publiſhed in their native idiome. The civilians conteſt this not to be fitt; yett it appears, that as in Rome the lawes were in Latine, ſo in Conſtantinople they were in Greeke, and the like in perticular cittyes; only poore England hath had learned men too hard for the reſt in this point, to have their lawes in a forein language: yett it was not alwayes ſo; many ſaxon MS. yett extant, conteine much of the politicall governement, and the ſaxon lawes are in that tounge. R. 2. H. 4. H. 5. and H. 6. uſed to write their letters in the french tounge; ſo are ſome

pleadings in the common bench to our time: yett none will argue, that in thoſe times the french language and parlements were heere introduced. Forteſcue writes, that the Engliſh kept their accounts in French; yett doubtles they had accounts heere, and revenues, before the french language was in uſe in England. My lord chiefe juſtice Coke ſaith, that duke William taught the engliſh men the norman termes of hawking, hunting, gaming, &c. yett none doubts, butt theſe recreations were in uſe heer before his time: ſo notwithſtanding our publique councell be called after the French, a parlement; it doth not follow, that therefore we had the thing from France, butt that it was in uſe with us before it was with them.

Before the norman invaſion, many of our lawes were written in Latine; as appears in our old authors [r], and by the antient records, rolles of mannors, and courts baron, the records att Weſtminſter, and att the Tower, yett extant in Latine. Many of our law bookes were tranſlated out of Latine into French, about E. 3. time. Moſt of our ſtatutes from E. 1. till the middle of H. 7. time, (notwithſtanding the ſtatute 36 E. 3.) are inrolled in the French; except the ſtatute 6 R. 2. and ſome other in Latine: before, and in that time, they were proclaymed by the ſherifs in Engliſh. For the reports of our law caſes in law French, by ſome [s] ſo enviouſly and ſcornfully decryed, it was not the language in which they were pleaded, or inrolled; butt made uſe of by the reporters according to their fancy; and they have in them moſt of

[r] Glanvill. ——Bracton.——Tilſbury.——Hengham.——Fleta.——Regiſter.——Lib. intrat. &c.

[s] Polydore.——Aliot.——Daniel.——Hottoman.——Cowel, &c.

the

the peculiar words, which could not without praejudice be changed from the ſaxons; the reſt was the pure French of that time, and is not difficulte to be learned: the juſtification of it is largely, and learnedly, ſett downe[t], by our author.

That the lawes of England were carryed from hence into Normandy is before ſhewed; and it is not improbable, that they were alſo carryed out of England, and eſtabliſhed in many partes of France. Paulus Jovius expreſſely affirmes, that when the engliſh kings reigned in a great part of France, they taught the French their lawes. By the chronicle of Eltham it is related, that our king H. 5. ſent to Cane, in Normandy, not only divines, butt with them engliſh common lawyers; and that was done by the agreement att Troys in Champeigne. If the lawes of England were carried from hence into France; it is not likely, that Fraunce ſhould be the originall of the lawes and parlements in England. Nor will the time of their's (as hath bin before noted) anſwear to the argument, that they were ſo: for of their aſſembly of eſtates by themſelves it is ſayd[u] that, "ſome hundreds of years paſt, we have given them (that is the common people of whom he then ſpake) place and voice in our congregations." And afterwards he ſeemes not to allow them a commencement much antienter than hath bin before remembred, much antienter than about three hundred years before that time; neither is there teſtimony of the three eſtates in that kingdome before that time. Butt Polydore, and his followers, and the greateſt oppugners of the right and honor of our nation, will yett afford unto our parlements a much more antient originall than the

[t] MS. Sir Rog. Owen, c. x.

[u] Paſquier recherches, f. 81.——Depuis quelques centaines d'ans, nous luy avons donné place, et voix en nos congregations.

time

time of the beginning of the three eſtates in Fraunce, by the judgement of their own authentique writers: and if any will be minded to give the leaſt credit to forein and domeſtick authors, to the charters, records, law caſes, manuſcripts, and other teſtimonies before cited; they may be fully ſatisfyed, notwithſtanding our uſe of the french word parlement, or any of the objections before remembred, that the originall of the lawes, governement, and parlements, is not from duke William (whom they call the conqueror,) nor from the Normans, nor from the french nation.

CHAP.

CHAP. XXIII

To be holden.

THE king ordeins his parlement "to be holden [a]," that is to be assembled, to be had; according to that translation of the latine word by the Germans, "to be had," and of the Netherlands, the same. In the like sence the latin authors themselves doe use the word, as in that of Ovid [b].

> In his right hand the staffe he held,
> And with his left the helme did welde.

That it is att the pleasure of the prince to hold his publique councells, hath bin shewed before: the manner of holding them is not improper for our discourse; it was not antiently with that state and honourable preparations as of later times.

Formerly some have bin held in the field [c]; as in that great meeting where it is sayd, that "both armies compelled the peeres to a conference:" and in that councell was the duell proposed, between Edmond Ironside and Cnute. Also that great assembly att Runny meade, neere Stanes, where the great charter was proposed and obteined [d], is termed a parlement though held sub dio; as many such councells are, especially when the exigencyes are such as will not admit of formalities: And so the french authors relate [e], that their

[a] Tenendum.—Hatten.—Heben.—Honden. [b] 1 Fast.——Ille tenens baculum dextrâ, clavemq; finistrâ. [c] Ethelredus abbas de general. reg. col. 363, 364.——Polychron. lib. vi.——Uterq; exercitus proceres ad colloquium cogunt. [d] Mat. Paris—K. John. [e] Haillan, f. 204. a.——A assembler les estats d royaume en camp.

kings,

kings, of the firſt linnage, uſed to aſſemble the eſtates of the kingdome in the field; and the Romans[f] ſometimes held their ſenates in the open ayre.

The hebrewe elders[g], att the firſt inſtitution of the ſanhedrim, were aſſembled att the tabernacle of the congregation; and afterwards att the dore of it.

For many ages our parlements have ſate in two ſeverall houſes or chambers, prepared with ſuch decency, and ſtate, as befittes the preſence of the prince, with his nobles and gentlemen of quality of the commons with him. In the chamber called the lords' houſe, att the upper end, on a foot pace erected [with] ſteppes is placed a rich chayre of ſtate, under a canopy; below, on each ſide, are great chayres for the king's ſons, or brothers; on the three other ſides are benches covered with red cloth, for the nobles to ſitt according to their rankes; and in the middle of the roome are wool ſackes, covered alſo with red cloth, where the judges and officers are placed; and this is ſuppoſed to have bin uſed, to putt the lords in mind of the great trade, and intereſt of the kingdome, in the woollen manufactures and clothing: all this is above the barre; and below it is a ſpecious place where the commons uſe to ſtand, when they come up to the lords houſe, and when ſuitors are permitted to come in.

The commons have another chamber, where they ſitt and debate by themſelves, not undecently prepared att this time.

In Germany, and Sweden, the roome where all the ſtates meete is very magnificently furniſhed; and perticular cittyes, as Hambourgh

[f] Roſinus de antiquit. Rom. c. vi. p. 280. Sub dio.

[g] Num. xi. 16.

and others, have their roomes of councell very nobly furniſhed, and full of ſtate. The rickſdagh ſitts in a ſpacious roome, ſtately and fittingly prepared; att the upper end therof, uppon a foot pace under a rich canopy, is the chayre of ſtate, all of ſilver, with rich cuſhions in it; on each ſide therof are ſeats for the ſenators, five of the ſeats being chayres for the five ricks officers togither, on the left ſide of the ſtate; the reſt for the ſenators are ſtooles of velvet; below them are ſett, on each ſide of the roome, formes one behind another covered with red cloth; a ſpace is left in the middeſt of the roome to paſſe, and on each ſide the formes are placed; on the uppermoſt [part], next to the ſtate and on the right hand of it, the nobility doe ſitt, that is the earles, barons, and gentlemen (ſuch as are created gentlemen by letters patents under the great ſeal, and none other are taken for gentlemen; theſe have vote in their rickſdagh, and are in the nature of our leſſer barons heertofore) on the formes, over againſt the nobility, are placed the biſhops, ſuperintendents and deputyes of the clergy; behind the nobility doe ſitt the deputyes of the boores, themſelves being no other butt boores; and behind the clergy doe ſitt the deputyes of the cittyes, and towns; and all doe ſitt, and are covered, if the king be not preſent.

The manner of holding the aſſembly of eſtates in France[1], the throne and ſtate of the king, the places of the daulphin, of the nobility, clergy, officers, and deputies of the provinces, was full of pompe and grandeur. So is the holding of the ſenate in Venice, in a roome highly extolled by travailers, for the magnificence of ſtructure, and beautifull adorning of it; nor is the throne, and ſtate of their duke, inferiour to thoſe of great kings.

[1] Thuanus, lib. xx. f. 557.

The word [k] throne comes from the greek worde which ſignifies a ſeate, and ſo it is rendred in the Latine "a ſeate where kings only ſitt;" the French doe calle it "the royall ſeate;" the Italians ſay "the chayre;" the Spaniards terme it, "the proper ſeate of the kings;" and the Germans to the ſame purpoſe. All agree it to be the ſeat royall of the king, where he ſitts att ſolemne times, as in his publique councells and the like. As it is recorded of king Herod [l], that, uppon a ſett day, he did ſitt uppon his throne. It is uſually erected on high, and conſpicuous, ſo that the prince may behold all, and be ſeen of all that are about him. Such a throne, and of great glory, was that of Solomon, of whom it is ſaid; [m] that the king made a great throne of ivory, and overlaid it with pure gould, and there were ſixe ſteppes to the throne, with a footſtoole of gould." Thoſe ſixe ſteppes [n] the rabbins make to be for an admonition of juſtice; when the king aſcended them, it was thus ſaid unto him; att the

1. Do not pervert judgement.—
2. Be no reſpecter of perſons.—
3. Take no reward or bribe.—
4. Plant no grove.—
5. Erect no image.—
6. Slay not the oxe.

[k] Θρόνος.—Solium, quòd ſoli in eo reges ſederent.—Siege royall.—Cadrega.—La ſilla propria de los reys.—Ein konigli cherſtul. [l] Acts xii. 21.
[m] 2 Chron. ix. 17, 18. [n] Schiccardus.—Jus reg. hebraeor. c. iv. p. 98.

And

And they write [o], that their kings did ſitt in the pallace, uppon the throne: and it appears, that the king of Iſrael, and the king of Judah, ſate either of them uppon his throne, when the prophets propheoyed before them. The inſtances of thrones in the ſcripture are too numerous to be inſerted: the like uſe of them was by all other ſoveraigne princes, both of the eaſt and weſt.

It may perhappes not be unſeaſonable to remember that uſe of a throne, which the hiſtorians of that time relate to have bin made by the daniſh king Cnute [p], who commaunded the royall throne of his empire to be ſett on the ſea ſhore, neere the water, as the ſea was flowing; and ſitting therin, ſpake to the ſea, as lord of it—— "Thou art under my dominion, and part of my empire; and the land on which I ſitt, is mine, and there is not any one in it, that dares reſiſt my commaund; therfore I alſo commaund thee, that thou aſcend not uppon my land, nor preſume to wett the feet of thy ſoveraigne." Butt the ſea, notwithſtanding this inhibition, comming up after its accuſtomed manner and nature, and not obeying his commaund, wett his feet and legges without any reverence. Wheruppon the king leaping haſtily out of his throne, and retiring from the waves, uſed theſe words——

"Lett all the inhabitants of the world know, that the power of kings is butt vaine; and that no man is truely worthy of the name of a king, butt he alone whoſe commaund both heaven, and earth, and the ſea obey by everlaſting lawes." One addes [q] theſe words to

[o] R. Maimon.—2 Chron. xviii. 9. [p] A° 1034.—Radulphus de Diceto.—Abbrev. chron. col. 468, 469.—Mat. Weſtm. p. 409.—Hen. Huntingdon, lib. vi. p. 364. Hiſt.—Polychron. lib. vi. c. 22.—Fox Acts and Monuments, vol. i. p. 211.

[q] Henry de Knighton.

his ſpeech——" I am a wretch, and a captive, able to doe nothing, poſſeſſing nothing without his guift: I commend, I recommend my ſelfe to him; and lett him be the guardian of debility, amen." After which time they report, that this king never wore his crowne; butt putt it uppon the head of the crucifix of Wincheſter.

The wiſe man confirmes the ſame doctrine.——[r] " I was great, and increaſed above all that were before me in Jeruſalem; alſo my wiſdome remained with me, and whatſoever my eyes deſired, I withheld it not from them; I withdrew not my heart from any joy, for my heart rejoiced in all my labour: then I looked on all my workes, and on the travaile that I had laboured to doe; and behold all is vanity, and vexation of the ſpirit, and there is no profit under the ſunne." And indeed what avayleth power, and thrones, and pompe, and greatnes of the world, when the end of all is, " All goe to one place, all are of the duſt, and all ſhall returne to the duſt."

It was good councell, on this argument, which Tully gave to his brother, to whome he commends this medium.——

They ſeeme (oh my brother!) to be moſt happy, who in the beſt commonwealth, when flouriſhing in the management of affayres, can hold that courſe of life, [s] " that they can be in buiſnes without daunger; and with honor in retirement."

Butt to returne to the manner of holding the great ſanhedrim of the Jewes; it is related, [t] that they uſed to ſitt in a conclave or

[r] Eccleſiaſtes, ii. 9, 10, 11.—iii. 20. [s] In negotio ſine periculo, in otio cum dignitate eſſe poſſint. [t] Maimon.—Habach. ſanhedr. c. xiv.—Seld. de ſynedr. lib. ii. c. xv.—Schiccard. c. i. theor. 2.

chamber

chamber of cutt ſtone, which was in the court of Iſrael, appointed for that uſe, and may be called the ſtone chamber.

Various names[u] have bin given to it by thoſe who interpret the place of ſitting. And the exedrae among them, were ſuch places or roomes as had ſeates, in which the philoſophers, rhetoricians, and others who delighted in ſtudyes, did uſe to ſitt and diſpute. One calles it the ſeſſion, as we doe the ſitting of our parlement; and from thence[w] the names which the Jewes gave unto their councell, thus holden, are proper, bicauſe there the nobles did uſe to ſitt.

This ſtone chamber is mentioned by the prophet[x], in the deſcriptions of the temple, over againſt the "pavement which was for the utter court," according as the name given to it doth ſignify.

The holy evangeliſts[y] in the ſtory of our Saviour doe mention, that the ſoldiers ledde Jeſus into the common hall, into the praetorium, the judgement hall, where it ſeemes the councell was holden.

The roome, where the houſe of commons is att this day holden, is not altogether unlike that which was called the exedrae, with benches and ſeates ſett round; not differing much from the forme of a halfe moone, on each ſide of the ſpeaker's chayre which is in the middeſt of the upper end of the roome. It is related by the hebrew authors[z], that the place where the great ſanhedrim ſate was of the

[u] Liſhkath, hagarith, (thirouth?) gazophylacium, paſtophorium, exedrae. [w] Seſſionem,—liſhkath, exedrae, ſanhedrim,—Vitruvius, lib. v. c. 11. [x] Ezek. xlii. 3.—Lithoſtroton atrii exterioris. [y] Mat. xxvii. 27.—Mar. xv. 16.—Jo. xviii. 28. 33. and xix. 9. [z] Maimon. in Jud. tit. ſanhedr. c. i. 11. 3.—R. Eleazer.—R. Zadock. &c. 8 ſanhedr.—Ibid. ſupr. et Dabill.—Sol. xxxvi. 2.

figure

figure of an halfe moone; and the prince of the ſanhedrim ſate in the middle of it, the elders or wiſe men on each ſide of him: the reaſon of his ſitting in the middle is given, that they might the better ſee him, and hear his voice. And to this figure (they expound) doth allude the text [a]; "thy navell is like unto a round goblet which wanteth no liquor, thy belly is like an heape of wheate ſett about with lillyes."

The Jewes of Spayne doe render it [b], "a round veſſell, wanting no liquor:" the Syriack, and Arabicke the ſame. They ſay, that the navell is there reſembled to the ſanhedrim, bicauſe it was held att Jeruſalem the middle, or navell, of the earth or world; the lunary figure, bicauſe that ſeate is an halfe moone; and the cup or goblet, bicauſe that is delivered to the whole world; an heape of wheate is ſaid, bicauſe every one hath benefit, as by bread, ſo by publique councells. Of this the chaldee paraphraſe ſaith—"And the prince of thy ſanhedrim, (by whoſe mouth, and goodnes we are governed, as the childe is nouriſhed by the navell in the mother's belly) he is glorious in the law, like the circle of the moone; and he is compared to lillyes, that he may have the ſtrength to labour in the lawe day and night."

A queſtion hath bin raiſed, amongſt us, touching the holding of our parlements, whether anciently both houſes were holden aparte, and ſate in ſeverall and diſtinct roomes, or houſes, as now they doe: or whether all the members of parlement did originally ſitt togither, and were holden as one entire body, in one roome or houſe, as the graecian and roman ſenates, and the ſanhedrim, and other councells did; as that of France, when the eſtates were holden,

[a] Cant. vii. 2. [b] Vaſo redondo no faltor templacion.

and thoſe of Germany, Sweden, and Scotland doe, when the eſtates meet, att this day.

The author of the abridgement of the parlement rolles, and my lord chief juſtice Coke are of opinion, that the lords and commons did all of them ſitt togither as one body untill 6 E. 3. att which time, by deſire of the commons (they ſay [c]) they were ſeperated: And the chiefe juſtice tooke occaſion, in a queſtion in the King's Bench, to publiſh his opinion there, that in antient time the parlement was holden, all the members ſitting togither; and the ſeperation was by deſire of the commons; butt notwithſtanding this ſeperation (ſaith he) they are butt one houſe ſtill; and he cites a record 30 H. 1. of their ſeates and degrees, as they were then holden. That the two houſes were held apart, and ſate in ſeverall chambers in R. 2. time, is evident by that paſſage of the earle of Suffolke [d], who was choſen by the knights of the ſhires 5 R. 2. to pronounce on their part, the buiſnes of the commonwealth; the day and hour wherin he was going to diſpatch it, "when he began to go up the ſtaires leading to the chamber where all the nobility of the kingdome did ſitt," he ſuddeinly dyed there. How this earle came to be choſen by the knights for their buiſnes, I ſhall not inquire; butt it ſeemeth by this ſtory, that the lords did then ſitt in a chamber by themſelves. The opinion that they were in one houſe till 6 E. 3. is endeavoured by Mr. Prin, (in his preface to the abridgement of the parlement rolles) to be confuted, where he ſaith, that 5 E. 3[e]. the lords and commons ſate aparte; and that then certaine lords, as a

[c] Abridgement of parl. rolles, rot. 6 E. 3.——Co. 4. inſtitut. p. 2.——P. 12 Jac. B. R. MS. rep. f. 6. b. [d] Tho. Walſingh. hiſt. p. 202.—Cum gradus aſcendere coepiſſet ducentes ad cameram in qua regni nobilitas tota conceſſerat, &c.

[e] 5 E. 3. rot. parl. n. 3.—6 E. 3. rot. parl. n. 3.—Les dits counts barons et grauntz, &c.

committee,

committee, did conſulte with the commons; that in the next yeare it is expreſſely ſaid, that the biſhops by themſelves, the lords by themſelves, and the knights by themſelves adviſed the king, &c. and that the biſhops and proctors of the clergy went by themſelves to conſulte; and that "the earles, barons, and great men," went by themſelves: therfore were of ſeveral houſes.

Butt a fuller evidence that they were holden ſeverally, is out of the before cited MS.[f] who ſaith, that 11 E. 1. Walſingham affirmes, that a parlement was att Shrewſbury, and in the ſame year another parlement was att Acton Burnell: when (ſaith our author) by the records, all was butt one parlement; and the lower houſe, as he calles it, was holden att Shrewſbury, and the upper houſe at Acton Burnell. Polydore[g], among his many miſtakes, yett agrees heerin to that which ſeemes orthodox, that in H. 1. time, to the end (ſaith he) "that every one may have an equall power of debate, they conſulte aparte the one from the other;" the king, prelats, princes and abbots meet in one place, and there ſitt togither; and the deputies of the cittizens and of the people, in another place neere unto it, where they debate among themſelves of matters to be done. My father hath a note uppon the ſtory of the baniſhment of divers noblemen[h], that "the cauſe was brought to the ſuffrage of the people," that is, to the vote of the houſe of commons then probably holden by themſelves, and this in Edward the confeſſor's time.

Another opinion (and not the leaſt probable) touching this matter is, that each of the eſtates uſed to conſulte aparte, and ſeverally to be holden in diſtinct houſes, from the firſt meeting of them; butt,

[f] MS. Sir Rog. Owen, c. i. f. 71. [g] Pol. Virgil, f. 477.—Ut aequa unicuiq; loquendi poteſtas fiat, alteri ab alteris disjuncti conſulunt. [h] Malmeſbury, f. 204.—Cauſa in ſuffragium popularium deducta, &c.

as

as occaſion required, did uſe to meet altogither in one roome; as appears by our records to have bin the practiſe, and continues to this day.

Att the firſt meeting of every parlement, when the king comes into the houſe of lords, the commons are ſent for thither, and the cauſes of holding the parlement are imparted to them all togither. In like manner uppon ſeverall other occaſions, the commons uſe to repayre to the lords houſe, uppon meſſages, att the paſſing of billes, and the like; and ſometimes both houſes attend the king at his owne pallace, and are holden togither att the giving of the royall aſſent, and att the adjournement, proroguing, and diſſolving of the parlement.

H. 4. ſate in his royall eſtate in the great hall att Weſtminſter[i], there being preſent the lords and commons, the arch-biſhop, by the king's commaund, declared the cauſe of holding the parlement: and the like is to be ſeen in the records in the beginning of moſt parlements, and att the adjournements, paſſing of billes, conferences with the king, and diſſolving of them. With the Germans and Swedes, the practiſe att this day is, that all the eſtates firſt meet togither with the emperor, and king, and after ſome propoſalls are then made to them, each eſtate ſeverally and aparte doe conſult by themſelves, in ſeverall colledges (as they terme them) or places for that purpoſe; and when they are come to a reſolution, all the eſtates meet againe in one roome, and the marſhall, or ſpeaker of each eſtate, gives up their reſpective reſolutions in the matters formerly propoſed: and att the paſſing of lawes, and concluſion of every generall buiſnes, the eſtates are held all togither; butt in conſultations they are aparte.

[i] 1 H. 4. rot. parl. n. 1.

What was with us, in antient times, can hardly be made out in cleerneſs. Butt of later times for ſome hundreds of years, the members of parlement have [k] bin holden aparte in ſeverall houſes, the lords by themſelves and the commons by themſelves, and have mett all togither uppon the occaſions before remembred: and though they conſulte apart, yett are they butt one body [l], the great corporation and body politick of the kingdome; and that which ſhall have the force of a law muſt be paſſed by conſent of them all, wherin the conſent of all the people is involved.

[k] The ſenſe ſeems to require that we read *conſulted* or *ſate*. (M)

[l] Co. 4 inſtitut. p. 2.

FH
MVSEVM
BRITANNICVM

CHAP.

CHAP. XXIV

Att our citty.

THE originall of cittyes is thus deſcribed [a]: huſband and wife make a family; children and nephews increaſing, it is neceſſary to adde other houſes; ſo comes the ſociety of many families, who finding the benefit therof for proviſion, and ſafety, erect themſelves into cittyes, and commonwealths. The philoſopher [b] accordingly joynes citty and civill ſociety togither; and every citty is conteined in a certain ſociety. The orator [c] agrees heerwith, when he ſaith, that nothing is more acceptable in earth to the chiefe God, who rules all this world, than "councells, and aſſemblyes of men to be aſſociated togither by lawe, which are called cittyes." For (ſaith Ariſtotle [d]) to thoſe that would live well, many things are requiſite, all which cannot be procured by men of one ranke or quality: and "the ſeverall rankes or qualities, and the many communications of offices or faculties, made for the conſervation of life, are nothing elſe butt a plurality, and diſtinction of the parts of a citty." The number of men living togither in a citty, being many, gives the greeke name [e] to it: and according to the etimology, generally that is called a citty which is "[f] the habitation of many perſons," and is incompaſſed with a wall. Another lawe calles that a citty where the governement is with juſtice, and order of magiſtracy.

[a] Patric. Senens. — Hinc ortum eſt ſeminarium civitatum. [b] Ariſt. lib. i. de repub. [c] Cicer. de ſomn. Scip. — Concilia coetuſque hominum jure ſociari, quae civitates appellantur. [d] Lib. i. polit. — Ordines diverſi ſeu officiorum communicationes multiplices, pro conſervatione vitae factae, nihil aliud ſunt quam pluralitas et diſtinctio partium civitatis. [e] Πόλις [f] Lucius de epiſc. et cler. l. nulli. — Omnis habitatio plurimorum. — De ſpectaculis, l. nemo.

With us[g], and in other regions, a citty is ſaid to ſignify ſuch a town corporate as hath a biſhop and a cathedrall church. And properly it is called a citty which hath a biſhop. So that England hath as many citties as biſhopricks, beſides Welles and Litchfield the which are alſo biſhops ſees, and Weſtminſter, which was alſo a biſhop's ſee, as will be ſhewne heerafter. And ſo France is ſaid to have 104 citties within the territories of it; and the reaſon is given by the author[h] bicauſe there are ſo many ſeats of arch-biſhops and biſhops.

This was occaſioned by a canon of the councell, that biſhops ſees, which before that time were in more obſcure places, (as the ſee of Saliſbury att Sunning, the ſee of Lincolne att Dorcheſter, and the like) that now they ſhould be removed "to more[i] eminent places;" the which was done accordingly, and the places to which they were removed either then had, or therby gained, and do retaine the name of cittyes. Some hold that antiently a citty and a burough were all one before this tranſlation of the biſhops ſees; ſince which time and by uſage amongſt us, the name of citty is become the more honorable. Anſwearable heerunto is the german word for a citty, "the habitation[k] of burgers:" and in a caſe of our law[l], a thing is putt to be done in a citty, as in London or in any other burough. Thus burgeſſes are called the inhabitants of cittyes. For (ſaith the author[m]) with the Saxons and Germans, burough and citty are all one. Thuanus[n] hath the word epiſcopall citty; and Polydore mentions the decree for tranſlation of biſhop's ſees to cittyes.

[g] Cowell, verbo Citie. — Lucas de Parma leg. unica tit. de metropol. Berito, tit. 21, lib. x. [h] Caſſanaeus in conſuet. burg. p. 15. [i] Ad loca celebriora. [k] Burgerſchafft. [l] 43 E. 3. f. 11, b. [m] Spelman, gloſſar. verbo Burgenſes. [n] Lib. xliii. 906. d.

Generally,

8

Generally, the parlements of England have bin holden att the great cittyes, as London, Weſtminſter, Yorke, Wincheſter, Coventry, Lincolne, Saliſbury; and by occaſion, in our memories, att Oxford, and att other cittyes; and ſometimes as occaſions might require, att meaner places, as att Cloveſho, att Clarendon, att Acton Burnell, and the like: butt generally att Weſtminſter, Glouceſter, or ſome other citty.

The ſanhedrim was held in the citty of Jeruſalem; the ſenate of Lacedemonians, att Sparta; of Athenians, att Athens; of Romans, att Rome; of the Venetians, att Venice; of the Germans, att Vienna, Auſburgh, Ratiſbone *, &c. of Bohemia, att Prague; of Poland, att Cracow; of Sweden, att Stockholme; and the like of other countryes.

* Thuanus, lib. cxiv.

CHAP.

CHAP. XXV.

Of Weſtminſter.

THE king calles it his citty, which is authority ſufficient for that name. Cambden [a] ſaith it ſome time was more than a mile diſtant; butt now is conjoyned ſo cloſe unto the citty of London, that it ſeemeth a member therof: wheras it is (ſaith he) a citty of itſelfe, having their peculiar magiſtrates and priviledges. Is was called in times paſt Thorney, of Thornes; butt now, Weſtminſter, of the weſt ſituation, and the minſter or monaſtery there. He makes it moſt renowned for that church, the hall of juſtice, and the king's pallace. The church is famous, eſpecially for the inauguration and ſepulture of the kings of England. Sulcard is cited by him, that there ſtood ſome time [b] a temple of Apollo, which fell downe with an earthquake; out of whoſe remains Sebert, king of the East-Saxons, erected one to St. Peter, which the Danes overthrew, butt biſhop Dunſtane re-edifyed. Afterwards Edward the confeſſor, with the tenth penny of all his revenues, built it new for his own ſepulture, and a monaſtery for benedictine monkes; endowing it with large revenues. W. 1. confirmed and added to thoſe donations, as hath bin before in part remembred. After that, 160 years, king H. 3. pulled downe that building, and from a new foundation erected a ſtately church, which was fifty years in building: and king H. 7. built his chappell of admirable elegancy, [c] the wonder of the world.

This church had firſt a deane and prebends; ſoon after, one biſhop and no more, and he is named biſhop of Weſtminſter in the ſtatute [d]

[a] Britannia, Middleſex, p. 428.
[b] Temp. Antonini pii imperat.
[c] Leland.
[d] 35 H. 8. c. x.

of H. 8. Queen Mary putt againe into poſſeſſion there the abbots and the monkes. Butt by queen Elizabeth, by act of parlement, they were removed; and the queen converted it into a collegiate church for 12 prebendaries with the deane, and an almſhouſe for as many old ſoldiers.

The great hall, and buildings neere it are a part of that ſtately pallace of our kings, yett remaining; the reſt of it having been conſumed with fire. In that great hall are the courts of juſtice holden, and in ſome of the chambers above are the houſes of parlement held, in their ſeverall and diſtinct places. All is called the citty of Weſtminſter[e] in ſeverall acts of parlement. That place where the houſe of commons did formerly ſitt is ſuppoſed by ſome[f], to have bin the chapter houſe of the abbot of Weſtminſter; which they collect from the parlement rolles. And the place where they now ſitt, in this citty of the Weſtminſter, is an old chappell, formerly dedicated to St. Steven, and then accounted an hallowed place.

It hath bin before noted, that the meeting of the elders, att the firſt inſtitution of the jewiſh ſanhedrim, was att the tabernacle; and afterward, it is agreed by learned men, that the place where they uſed to ſitt was before the dore of the tabernacle: and where the tabernacle was, there the ſanhedrim ſate, as in Silo, Mizpah, Gilgal, Nobe, Gibeon, the houſe of Obed Edom, and att laſt att Jeruſalem. Preſently after the building of the temple, the place of meeting in that councell was there; as it is ſayd[g] by Moſes, "and thou ſhalt doe according to the ſentence which they of that place, which the Lord ſhall chuſe, ſhall ſhew thee," which intimates (ſaith an expoſitor) both the temple, and the place of meeting of the ſanhedrim.

[e] 35 El. c. vi. [f] Abridgment parl. rolles, preface. — 50 E. 3. rot. parl. n. 8. [g] Deut. xvii. 10.

So

So the ſenate of Rome [h] did uſually ſitt in the temple, wherof it is ſaid, that "the place where the ſenate was to meet, could be no other butt that which the augures did appoint, which they called the temple." And when the ſenate was to meet, or forced into other places, [i] the colledge of augures decreed, that thoſe places from thenceforth ſhould be temples; to the end, the matters there deliberated ſhould be confirmed. Some times they ſate in the temple of Jupiter [k], in the capitoll, in the gate of Cappua, in the houſe of Bellona. So Paſquier notes [l] that the druydes uſed to ſitt in councell, "in a hallowed place," which, ſome hold, was their temple.

[h] Gothofredus, lib. i. c. 17. — Locus ubi conveniendum eſſet ſenatui alius eſſe non poterat, praeterquam qui ab auguribus definiebatur, quem ipſi templum vocabant.

[i] Curia Hoſtilia, Pompeia, Julia.

[k] Roſinus de antiquitat. Rom. c. vi. p. 280.

[l] Recherches, p. 7. — En lieu ſacrée.

CHAP.

CHAP. XXVI

On the eight day.

THE day is given for man to labour in, and is the proper time for buiſnes. It was one of the means to ſpeed counſells, given by the chancellor to the parlement [a], to be in the houſe early in the day. Our parlement's conſtant courſe is to begin their ſitting in the morning, and to riſe about noone, midday; except ſome extraordinary occaſions, taking up long time of conſultation and debate, have ſometimes detained them late in the houſe; and hath in our remembrance come to night ſittings: yett experience hath taught us, that it is more ſuitable, and more effectuall for the good and well diſpatching of great affayres, to obſerve convenient hours, and not to tire both judges, and counſellors, and people with too long ſittings; the end wherof is, as Jethro admoniſhed Moſes (when he told him of his ſitting from morning unto the evening to judge the people, [b] his father in law telles him) "the thing that thou doeſt is not good; thou wilt ſurely weare away both thou and this people." Butt a convenient portion of the day is moſt fitt for buiſnes; as the parlement uſeth to ſitt in the morning, untill noone.

The evangeliſt [c] relates, that our bleſſed Saviour was ledde from Caiphas, unto the hall of judgement; and it was early. The time of the ſitting of the ſanhedrim [d] is expreſſed to be from the time of the morning ſacrifice, untill the time of the evening ſacrifice. The morning ſacrifice began by day-breake, and was preſently offered;

[a] 8 R. 2. rot. parl. n. 5. [b] Exod. xviii. 13. 17, 18. [c] Jo. xviii. 28.
[d] Gemar. Hieroſolim. ad tit. ſanhedr. c. i. f. 19. et Babilon. c. 10. f. 88.——Maimon. Holach. ſanhedr. c. iii.

and then the ſanhedrim began to ſitt, and continued ſitting till the evening ſacrifice began, and then they departed; which hour is accounted to be about [e] two o'clocke in the afternoone, or halfe an hour before three. With this agrees, [f] in that part of it, that which is ſaid of their judgements, that they were exerciſed by them "a little before noone; and the reaſon is given of that time, bicauſe then the court is full of clyents, and ſuch as follow their buiſnes." The ſame time is uſed by our tribunalls att Weſtminſter, and by our ſupreameſt court the parlement. And heerwith agrees that paſſage of Joſephus relating the ſtory of Ruth, and her marryage; he ſaith, that the buiſnes was tranſacted before the judges, "when it was [g] about the time of noone, or mid-day:" and generally they were to ſitt in judgement in the day-time. Uſually, among the Graecians, their judiciall time was about mid-day; which is teſtifyed by Heſiod [h], and which we call "full courte." The times of meeting of the roman ſenate appear by their law, that if any thing were done, or any lawe made by the ſenate, before the ſun-riſing or after the ſun-ſetting, it was of no force. And Seneca [i] informes us of the time of their ſitting, where he ſaith; "our aunceſtors (ſaith he) did forbid any new motion to be made in the ſenate, after the tenth houre. As I have often knowne it ordered in the houſe of commons, that no new motion ſhould be made after 12 a clocke, and that late and long ſittings, eſpecially in the night, have ſeldome proved ſucceſſefull to their buiſnes. Men's ſpirits being tyred are not ſo apt for temper, or judgement, as when they are freſh; nor is it ſo equall, or inge-

[e] Lib. ii. Seld. de ſynedr. p. 425. [f] Menochius de repub. judaic. lib. i. c. 6. col. 44.——Paulo ante meridiem cum jam forum litigantibus et negocia ſua tractantibus plenum eſt. [g] ἤδη μεροήσης ἡμερας. [h] Περὶ πλήθουσαν ἀγορήν.—— Agellius, lib. xiv. c. 7.——Senatus conſultum nec ante exortum, neque poſt occaſum ſolem factum ratum fuiſſe. [i] De Tranquil. vitae.——Novam relationem poſt horam decimam in ſenatu fieri vetabant.

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nious, to preſſe more uppon ſome men than others whoſe conſtitutions may poſſibly be ſtronger, and better able to hold out and continue togither, than elder or more infirme men can bring themſelves unto: yett ſome preſſing occaſions may require it.

If in the jewiſh ſanhedrim [k] a civill matter were begun in the daytime, it was lawfull to make an end of it by night; butt not to begin by night, nor to receive witneſſes, or to make contracts by night. Sometimes, according to the weight of the buiſnes, they continued ſitting in the night time; butt never any judgement was given in a criminall cauſe by night; nor did they begin any great matter in the night time, butt diſpatched all as neere as they could by day, the time appointed by God for buiſnes: and we ſhould not turne night into day, nor day into night.

The parlement, after they have once mett uppon the day appointed by their ſummons, doe then meett every day, except Sundayes, and ſome holy dayes, or dayes of faſt or of thankſgiving. The ſanhedrim [l] ſate two days in the weeke; butt not uppon ſabbaoths or feſtivall dayes, which they held not to be juridicall dayes.

The parlement is ſo conſtant in their dayly ſitting, that every time when the houſe of commons riſeth, the ſpeaker pronounceth, that the houſe adjournes untill the next morning; and ſo on ſatturdayes the houſe adjournes it ſelfe till monday. The word adjourne is from the french word jour; "[m] and to adjourne is to putt off from one day to another."

[k] Gemar. Hieroſolim. Ubi ſupr. et Babilon. ——Maimon.——Miſn. &c.

[l] Gemar. Babil. et Hieroſol.

[m] Adjourner, unde adjornare; et adjornamentum eſt ad diem dicere, et diem dare.

The power of adjourning themſelves is in either of the houſes of parlement, and alſo in the king when he ſees cauſe for it. The difference between an adjournement [n] and a prorogation is, that by the prorogation in open court there is a ſeſſion; and then ſuch billes as paſſed in either houſe, or by both houſes, and had no royall aſſent to them, muſt att the next aſſembly begin againe: (for every ſeverall ſeſſion of parlement is in law a ſeverall parlement) butt if it be butt adjourned or continued, then is there noe ſeſſion; and conſequently all things continue ſtill, in the ſame ſtate they were before the adjournement. The title of divers acts of parlement is [o] att the ſeſſion holden by prorogation, or by adjournement and prorogation; butt never by continuance or adjournement only; and the uſuall forme of pleading is, [p] att the ſeſſion holden by prorogation: and the paſſing [q] of any bills with the royall aſſent, or giving of any judegment, doth not make a ſeſſion, untill it be prorogued or diſſolved.

Our author holdes an adjournement or continuance much more beneficiall for the commonwealth, and for expedition of matters, than a prorogation: and when a parlement doth meet att a day, and ſitt many dayes, butt is diſſolved without any act of parlement paſſed, or judgement given, it is no ſeſſion of parlement, butt a convention [r]; butt if a judgement be given, though no act of parlement be paſſed, it is a ſeſſion.

Att the day appointed for the beginning of the parlement [s] the king muſt be preſent, either in perſon, or by repreſentation by his

[n] 4 Inſtit. Co. p. 27.——Prorogo, à porro et rogo, unde prorogatio.
[o] Journall book, Lords houſe. [p] Ad ſeſſionem tentam, &c. per prorogationem.
[q] 14 E. 3. rot. parl. n. 7, 8, 9.——3 R. 2. n. 1.——7 H. 4. n. 29.——1 H. 7. n.—1 H. 7. f. 4. b. [r] 18 R. 2. rot. parl. [s] 3 H. 6. rot. parl. n. 1.——24 E. 3. rot. parl. m. 18.

commiſſioners. Uppon this firſt day of the ſitting of the parlement the king uſeth to ride in ſtate to the lords houſe, in his parlement robes which are full of royalty and magnificence; he is attended by the great officers of ſtate, and by the peeres, all on horſeback in their robes (according to their ſeverall rankes) with their ſervants and lacqueys in rich liveryes waiting on them on foote; the king's guards in their coates, armed with the old manfull weapons of ſwords and halberds, and ſome companies of horſe, pikemen, and muſketiers if ſuch are in being (and it is not unhappy when they are not). The king rides under a canopy ſupported by ſome of the nobles; and the ſword, and enſignes of ſtate carryed before him by ſuch of the lords as he pleaſeth to appoint to that honor: the peeres are alſo all uppon their rich foot clothes; and every one indeavours by his gallantry to expreſſe his devotion to his maſter's ſervice. The ſhow is full of majeſty and ſolemnity; and the uſe of this pompe is to take the eyes and affections of the people, who are more pleaſed with ſuch ſpectacles, and their minds more buſyed and ſatisfyed with them, than with more ſerious matters. This cauſed the lord treaſurer Weſton, in his ſpeech to the lord major of London, to admoniſh the citty, not to lay downe their uſuall ſolemnities and ſhowes; obſerving, that it was not only the lord major, and court of aldermen or common councell which governed that great city, butt the rich trappings, pageants, green men and officers att the lord major's ſhowe; which alſo cauſed a reverence in the vulgar, and an admiration of the power and greatnes of their magiſtrates: and with their wiſe order, and adminiſtration of juſtice, did conduce to the yielding of a more full obedience to their orders. And this was alſo a policy and prudence in the ſtate of Rome, to permit and countenance the theaters, and gladiatory ſhowes, with their magnificent ſolemnities and triumphes, wherby the mindes of the common people might be intertained, their time paſt away in things of delight and pleaſure

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to them, and they be kept from ſuch other meetings and opportunities wherin plotts and contrivances againſt the commonwealth (by ſuch whoſe buiſy and active ſpirits muſt be doing) might be ſett on foote, to indaunger publique ſafety.

When the ſtates of the empire doe meet in their diette, the comming together of ſo many great princes is with much expence and pompe, both in their perſonall gallantrye, and the large traines attending on them.

In Sweden they obſerve their conſtant forme and ſolemnity in the meeting of their rickſdagh, which is in this manner. Some time before the day of meeting in the towne appointed for it, notice is given in the markett places, ſtreets, and lanes, by ſound of drummes, and trumpetts, and an officer in his habit on horſe backe proclaiming, that ſuch a day and hour, in the great hall of the caſtle called the ricks ſaal, all the eſtates are to meet according to the uſuall cuſtome, to heare the propoſalls, and pleaſure of the king. On the day, the nobility doe firſt meet in a place called the riddarhus, and chooſe their marſhall or ſpeaker; then the clergy meete in the conſiſtory of the cathedrall church, to whom the arch-biſhop of Upſale, if preſent, is allwayes ſpeaker; the cittizens meet in the citty hall, and the conſull of Stockholme is their ſpeaker or marſhall; the boores meet in a place called the gilleſtriga, and chooſe one of their company for their marſhall. Att the appointed hour, firſt the boores with their marſhall before them, in a decent progreſſe, goe up to the caſtle, and take their place in the great room prepared for the meeting; then follow the deputies of cittyes and burroughs with their marſhall before them, and take their due place; after them, the nobility; and laſt of all, the clergy; and being all ſate in the great room, the king comes in attended by the ſenators, and his

own ſervants and guards: having taken his place in the chayre of ſtate, all goe forth butt the members of the councell; and the dores being ſhutt, the chancellor declares to the aſſembly the cauſe of their meeting, and is anſweared by each marſhall in his order; and ſo they depart to their ſeverall colledges to conſult uppon the matters propoſed.

On this day, being the firſt day of the meeting of the parlement, the members of the houſe of commons are called over by their returnes, before the lord high ſteward, or his deputyes uſually made for that purpoſe; and having anſweared to their names, they then take the oaths of allegeance and ſupremacy, and ſo enter into their houſe; then are they ſent for, by the meſſenger or uſher of the blacke rodde, and come up to the lords houſe; when the king being preſent, or commiſſioners authoriſed by him, the king, or moſt commonly the lord chancellor or keeper of the great ſeal, in preſence of the lords and commons, doe ſhew the cauſes of the calling of this parlement. Butt the king may appoint any other whom he pleaſeth to doe this; as many times [t] the chief juſtice hath bin appointed to doe it, and ſome times others. Sir John Greene the king's chiefe juſtice (though the chancellor were preſent) in the preſence of the king, the lords and commons, declared the cauſes of the parlement in Engliſh, &c. The like is in the beginning of every parlement uppon the rolle, where a biſhop, being chancellor, uſually took a text of ſcripture which he repeated in Latine, and diſcourſed uppon it: when a judge declared the cauſes of the parlement, or a chancellor who was no biſhop, he did it in an oration ſummarily. The concluſion is, to require the commons in the king's name to goe togither, and to make choice of a fitt perſon to be their ſpeaker. Then the com-

[t] 22 E. 3. Thorpe.—17 E. 3. rot. parl. n. 7.

mons

mons repayre to their houſe, and uſually ſome of the members before acquainted with the king's minde, doth nominate one among them to be choſen for their ſpeaker; wherin there is ſeldome contradiction. Coke ſaith, that after their choice the king may refuſe him; and that the courſe is, for avoyding expence of time and conteſt, (as in the congé d'elire of a biſhop) that the king doth name a diſcreet and learned man, whom the commons elect: butt without their election (ſaith he truely) noe ſpeaker can be appointed for them; bicauſe he is their mouth, and intruſted by them, and ſo neceſſary, as the houſe of commons cannot ſitt without him; and therfore [u]ſicknes is a good cauſe to refuſe or remove a ſpeaker, and to chooſe another, though it be no cauſe to remove another member.

[u] 1 H. 4. rot. parl. n. 62, 63. — 1 H. 5. n. 9. — 15 H. 6. n. 10.

CHAP.

CHAP. XXVII

Of May.

IT falles out aptly for this great councell to be ſummoned to meet in this moneth; and may it prove a propitious omen of the good ſucceſſe of their counſells! The name of the moneth Maius is derived [a] à majoribus, for the elder men, "by whoſe counſell the commonwealth is governed;" as Junius, à junioribus, "June from the younger men" who were for the deeds of armes. When Romulus had divided the people of Rome into the elder and the younger men, the one for counſell, and the other parte for armes, to defend the commonwealth; in honor of each part, he called the one moneth for the elders, May, and that for the younger, June. Agreeable heerunto is that of the poet [b].

"The name of May from elders came,
From younger men June had its name."

Others derive the moneth of Maius à majeſtate; and well may it deſerve that etymology in relation to our ſoveraigne, being the moneth of his happy birth, and of his happy reſtauration; and may it continue to be happy to him, and to his ſubjects, in the counſell ſummoned in this moneth to be aſſembled!

This pleaſant and fruitfull moneth the Saxons [c] uſed to call Trimilki, bicauſe in this moneth they began to milke their kine three

[a] Macrobius. Maius à majoribus dictus, quorum conſilio reſpub. gerebatur.

[b] Ovid. 5 Faſt. —— Hinc ſua majores tribuere vocabula Maio,
Junius à juvenum nomine dictus adeſt.

[c] Verſtegan, f. 61.

times in a day. The Germans alſo called it May [d]; and it is worth the noting how univerſally almoſt all the nations of Chriſtendome concurre in the appellation of this moneth of May. The French ſay May [e], the Greeke Μαΐος [f]; the Italians ſay Maggio; the Spaniſh is Maio [g]; the Poliſh May; the Swediſh and Daniſh, Mai, as our Engliſh May.

The Romans [h] had their "ordinary meetings of the ſenate, and the meetings uppon ſummons:" the ordinary meetings were not to be above twice a moneth; and none, butt thoſe choſen by lott, needed to attend in the moneths of September and October.

The parlement ſitts every day of the moneth, except the Lord's dayes.

The ſanhedrim uſually ſate two dayes in each weeke; and their extraordinary meetings, as often as occaſion did require.

Frequency of meeting of the publique councells of a nation, and not continuing long togither att one time, is for the advantage of a nation; to conſult for the ſafety of the whole, and repelling all daungers, and relieving any that are oppreſſed: and that this was deſired, by the people, appears in divers lawes made for the often meeting of the parlement.

And this was very antient, as appears by a councell held [i] att Hertford under Theodore arch-biſhop of Canterbury, king, biſhops, and

[d] Der monat Mey. [e] Le mois de May. [f] Μαΐος. [g] El mes de Maio. [h] Roſinus ſupr.—Senatum legitimum et alium indictum.
[i] An° 673.—Beda, lib. iv. c. 5.—Act. pontific. Cant. col. 1639.—Parker antiquit. p. 15.

nobles being preſent, in a parlementary councell. The 7 canon is, [i] that a ſynod ſhould be aſſembled twice a yeare; or att leaſt they agreed in common, that in the kalends of Auguſt, att Cloveſhoe, a ſynod ſhould be held once a yeare; and in purſuance therof, a councell was held att the ſame place under king Beorulfe; and in his four years of his reign [k] four of theſe councells were holden. The like [l] was ordeined by the lawes of king Alfred, that a pitena ȝemote ſhould be holden twice a yeare in time of peace, or oftener if need ſhould be.

King Edgar [m] ordeined, that the great aſſembly, out of every province, ſhould be holden twice a yeare: and whether this was a nationall or a provinciall councell, it was the moſt eminent and chiefe councell of thoſe parts.

The ſeverall parlements, in the time of W. 1. and his ſucceſſors untill H. 3. are not accounted particularly and cleerly by our hiſtorians, and the records of thoſe times are wanting: there is yett ſufficient teſtimony of ſtory, that then our parlements were holden very often; and in the times alſo of H. 3. and of his ſon E. 1. who is ſaid [n] to have held his parlement once in every two years, and many years oftener. Among the ordinances of E. 2. it is provided, that a parlement ſhall be holden once a yeare, or more often if need be.

[i] Spelman. concil. p. 152, 153. [k] Act. pontif. Cant. col. ſupr.

[l] Spelman concil. 334.—Gervaſ. Dorobernenſ.—Mirroir of juſtice, c. i. §. 3.

[m] Leg. Edgari c. v. Celeberrimus ex omni ſatrapia bis quot annis conventus agatur.

[n] 4 Inſtit. Co. p.—5 E. 2. Ordinat.

In E. 3. time it is enacted, [o] that a parlement ſhall be yearly; and for maintenance of the articles and ſtatutes therin recited, and for redreſſe of divers miſchiefs which dayly happen, a parlement ſhall be holden every yeare. After that, the commons petitioned the king, that a parlement may be holden every year: the king's anſwear is, to the parlement, "there are ſtatutes made therefore." Againe in R. 2. time [p] the commons petition, that a parlement may be yearly holden, to redreſſe delayes, and to end ſuch cauſes as the judges doubt of: to which the king's anſwear is, "it ſhall be as it hath bin uſed." In the next year [q], one of the cauſes of ſummoning the parlement is declared to be, "for that it was enacted, that a parlement ſhould be yearly holden." The printed booke of our acts of parlement ſhowes the frequency of them, purſuant to the former lawes in the times of H. 4. H. 5. H. 6. E. 4. and the reſt of our princes: and in king Charles the firſt's time [r] an act was made, intituled, "an act for the preventing of inconveniences happening by the long intermiſſion of parlements;" reciting the old lawes, and that parlements ought, by the lawe, to be holden att the leaſt once every year for the redreſſe of grievances; and enacts, that parlements ſhall be called once in three years att the leaſt, or oftener if the publique affayres ſhall ſo require; and in the act are appointed ſett dayes (in the moneths of September, and in November, and January) for the times of meeting of the parlements, or for electing members of it, in caſe no writ of ſummons be iſſued according to the act for the ſame.

[o] Stat. 4 E. 3. c. xiv.—Stat. 36 E. 3. c. x.—50 E. 3. rot. parl. n. 177.
[p] 1 R. 2. rot. parl. n. 95. [q] 2 R. 2. rot. parl. n. 3. [r] 16 Car. c. i.

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In Germany[s] their publique councells antiently uſed to be held every year, and were to continue one moneth att leaſt; and ſometimes with us (as in the act for the trienniall parlement) they are to ſitt att the leaſt fifety dayes, without being proroged or diſſolved. The emperor Conſtantine[t] appointed yearly councells to be held att Arles. Pepin appointed the like: and ſo did the emperor Charles the Greate, and further ordeyned to this effect; "Lett no man delay to come to the mallum (ſo they uſed to call their diettes) the one about the time of autumne, the other about the time of ſummer." Among the Arragonians it is ſayd, "[u] that their publique councells antiently were held once a yeare; and afterwards they were held from two years to two years:" and their ſtories ſhew the frequent calling of them.

The like courſe was alſo held among the French; and as antient as the time of the Gaules, wherof Paſquier writes[w], that the Druydes did yearly aſſemble, holding publique councells, and doing right and juſtice univerſally to the Gaules. In another place the ſame author ſaith of his countreymen, that their antient majors of the pallace "did firſt introduce a forme of a yearly parlement," and ſometimes held thoſe aſſemblyes twice a yeare. In concurrence with this opinion it is teſtifyed by ſome other of their authenticke authors, [x] that the aſſemblyes of the eſtates in France were wont antiently to

[s] Lib. de rat. ſtat. imper. Germ. p. 344. Comitia quot annis celebrari olim ſolita. [t] Goldaſt. tom. iii. conſtit. imper. p. 1. an° 411.—Reg. lib. ii. Chron.—Hincmar. Rhemenſ. ep. iii. c. 29. Ad mallum venire nemo tardet, unum circa aeſtatem, alterum circa autumnum. [u] Reſpub. Hiſp. f. 122. Comitia haec dudum quotannis ſemel celebrata, mox de biennio in biennium. [w] Paſquier Recherches, p. 7. S'aſſemblent annuellement faiſans droict univerſellement aux Gaulois.—F. 43. Introduiſſirent premierement une forme de parlement annuel. [x] Honorius de regno Galliae, f. 539. et Code Henry, lib. xx. tit. 2.

be held every yeare; and heerwith is a concurrent opinion of ſeverall other writers whom I pretermit.

The ſame frequency of publique councells is to be found in the ſtories of the northerne countryes, where ſcarce a yeare paſſeth without holding them.

From this firſt day of the parlement's meeting, all acts made in that ſeſſion are reckoned to beare date, and the whole ſeſſion accounted, in lawe, butt as one day: and from this day the acts of that ſeſſion doe looke forward, and ought not to looke backward; for a retroſpect in a law can hardly be without injuſtice, we find few of them among our ſtatutes; one in H. 8. time inflicted the puniſhment of being boyled to death, for putting poyſon into a pott of pottage.

Butt it was rightly noted by the excellent earle of Strafford, in his laſt reply att his ſolemne tryall: " Doe we not live by lawes, and muſt we be puniſhed by lawes before they be made? farre better were it to live by no lawes at all (butt to be governed by thoſe characters of diſcretion, and virtue, that nature hath ſtamped in us) than to putt this neceſſity of divination uppon a man, and to accuſe him of the breach of law, before it be a lawe att all." If a waterman ſplit his boat by grating on an anchor, and the ſame have a buy appending to it, he is to charge his own inobſervance; butt if it hath none, the owner of the anchor is to pay the loſſe.

CHAP.

CHAP. XXVIII

Next inſuing.

THE "next inſuing," of a parlement, hath bin ſometimes deſired, by the people, not to be too ſoone to meet againe; as in that parlement where Walſingham[a] mentions a fifteenth to be graunted by the laity, "uppon condition, that, from the kalends of March untill the feaſt of St. Michael in the next yeare, there ſhould not be another parlement:" poſſibly uppon too much trouble, and charge of being too often called out of their countryes; or ſome perticular fears, or reaſons of diſcouragement, to be actors in thoſe troubleſome times of R. 2; or doubting to be ſoone called uppon, to give the king more money, this condition might be there added. Yett generally, and in good times, the deſire of the people hath bin to meet often in parlement; and the practiſe accordingly, as hath bin before ſhowed. Uppon the like reaſons probably of troubleſome times, it might be, that the eſtates of Sweden complained of king Erick, (eldeſt ſon of king Guſtavus the firſt) among other things, for aſſembling the rickſdagh too often; to the great hinderance of thoſe who were ſummoned, and of the countryes: yett with them, as in other kingdomes, it is related, that they uſed to have their publique councells once in three years; "[b] and when neceſſity urged, they uſed to be yearly called."

Doubtles neceſſity is the great motive, and commaunder of thoſe meetings; and the prince is (in that caſe) the judge of the neceſſity, and when is the time requiſite for the "next inſuing."

[a] Tho. Walſingham, Ypodigmae Neuſtriae, f. 533. 40. an° 1380. Conditione adjecta, quod a kalend. Martii uſque ad feſtum S^ti Michael. anno revoluto aliud parliamentum non fieret. [b] Fuiſſor, Secretar. ſuecicus, MS. Quando neceſſitas urget, ſingulis annis, comitia univerſalia peraguntur.

Accordingly

Accordingly is that author cited by Coke [c], that the king calles his parlement when he thinkes fitt, and "as often as it is needfull to conſulte about the great and weighty affayres, that the commonwealth may receive no prejudice." And Polydore himſelfe agrees heerin [d], that "as often as the occaſions did require" (and therof he only was, and none elſe could be the judge) "the king att his owne pleaſure ſummoned" his parlement; he was the only director of the time of the next inſuing parlement. My lord Elleſmere [e] confirmes the ſame, in the argument he made in the famous caſe of the poſtnati, that the kings of England uſed to call their nobles, clergy, and commons togither, when they, (that is, when the kings who were the only judges therof) ſaw great and urgent cauſes for the doing therof. And this may well be admitted, the parlement itſelfe having declared, that the appointment of the time, and place for the holding of parlements, hath alwayes belonged as it ought, to his majeſty and his royall progenitors [f]. Thus (as is ſhowed in another place) Moſes, and Joſhua, Samuel, the judges and kings of Iſrael and Judah, ſummoned their generall publique counſells when they judged it fitt. Thus among the Graecians and Romans, the extraordinary meetings of their ſenates were att ſuch times as the prince, or magiſtrates thought good. So in Germany, Sweden, etc. their publique councells are called by the prince, [g] att ſuch times as he judgeth it expedient. If the exigencies of the ſtate (in the prince's judgment) did att any time require it, the eſtates of the empire, for that cauſe, were extraordinarily to be called. The three

[c] Epiſt. 9 rep. Quoties de rebus arduis, ne quid detrimenti reſpublica capiat, conſultandum. [d] F. 477. Quoties res poſtulat ſuo arbitratu convocat.

[e] Caſ. poſtnati, Elleſmere's argument, f. 110. [f] Stat. 16 Car. 1. c. i.

[g] Pax public. de an° 1495. tit. Von der uver fahree des Friedens enthallung. Ordines imperii eâ de cauſâ, extra ordinem convocandi fuer.

ſtates

ſtates [h] in France were to be aſſembled att ſuch time, and place, as pleaſed the king to ordeine.

Notwithſtanding ſuch a day, next inſuing, appointed by the king for the firſt meeting of the parlement; yett if the king ſee cauſe, he may prorogue their firſt meeting untill another day: and that by writ patent, under the whole great ſeale, reciting the writ of ſummons; and this writ to beare teſte before the retorne of the writ of ſummons, and ſigned above with the king's ſign manuall, and directed to the lords, and to the knights, cittizens and burgeſſes called and choſen to this parlement, for certaine conſiderations, etc. to prorogue the parlement to a certaine day. And att the returne of the ſummons, this writ being read in the lords houſe before ſome of them, and ſome of the commons there aſſembled, and prorogation made accordingly, the parlement is prorogued. Thus it was done 1 Eliz.[i] the retorne of the ſummons was 9th Octob. and it was prorogued to 25th of Febr. following, on which day the parlement mett, and was adjudged then to begin, and not 9th Octob. The like was done 5 Eliz.

[h] Code Henry, lib. xx. tit. 20. Ley. 2. En tel temps et lieu qu'il nous plaira ordonner. [i] 3 El, Dyer, 203. a.

CHAP. XXIX

And there to have conference.

THE king reſolves "to have conference" with his parlement; and ſome matters are proper for ſuch a conference only: they may be of ſo univerſall and high a conſequence, that they are not proper for any other conference butt between the king and his parlement; as Caeſar notes, in his recitall of the cuſtomes of Brittaine, that none ought to ſpeak about the affayres of the commonwealth, butt by the councell [a]. And it is teſtifyed by our auntient author [b], in his mirroir of juſtice, that the king and his companions (as he properly enough ſtiles the comites) uſed to meet togither att London, to conferre about the governement of the people of God. And although his language be old (and as ſome call it) law french, yett his matter is good; that affayres of governement ought to be conferred on in parlement only, and not be the ſubject of conferences and debates att large; leaſt it come to that whereof Tacitus ſpeakes [c], "that there were in place who rather would interpret, than obey the commands of governors:" and my lord of St Albane's ſaith; "that diſputing, excuſing, cavilling uppon mandates and directions is a kind of ſhaking off the yoake, and aſſay of diſobedience; and ſeditious tumults, and ſeditious conferences and fames, differ no more butt as brother and ſiſter."

The word [d] uſed in the writ for "conference", is well expreſſed, in the ſpaniſh, "to have ſpeech one with another"; and the Italian

[a] Jani Anglor. Seld. f. 25.—De republica niſi per concilium loqui non conceditur.
[b] Horne mirroir, c. i. § 3.—Pour parlementer ſur le guidement del peuple de Dieu.
[c] Erant in officio, ſed tamen qui mallent mandata imperantium interpretari quam exequi.——Eſſay of ſeditions and tumults.
[d] Colloquium.——Habla uno con otro parlar.——Ragionare.—Parlamento, parole havute inſieme.——Parlementer enſemble.

calles

calles this conference, "a reaſoning of the matter, a ſpeaking of their mindes;" and the French uſe the ſame expreſſion "to ſpeake their mindes togither."

When there falles out to be any difference of opinion between the two houſes of parlement, uppon the paſſing of a law or any other matter, the courſe for reconciling therof, and for ſatisfaction of one another, is for one houſe to demaund of the other a conference, by committees of the ſeverall houſes; ſometimes by a committee of both houſes; and as the occaſion may be, to deſire a free conference, where every member hath the liberty to alleadge his reaſons for maintenance of the opinion of that houſe whereof he is a member: and by ſuch conference, to endeavour to perſwade a concurrence in thoſe that differ. And in ſome caſes, when the king is not ſatisfyed with that which is propoſed to him, they uſe to appoint a committee of both, or either of the houſes, to attend his majeſty, and to informe him of the matter in conſideration, and the reaſons of their deſires; to [e] whom the king is pleaſed to vouchſafe a conference with himſelfe, according to the tenor and purpoſe of the writ of ſummons.

Thus it is in the diettes of the empire; if the ſtates differ in opinion, that is, one ſtate differ from another (who give their ſuffrages by colledges, and not by ſingle votes) the matter remaines undetermined; unleſſe by conferences they cann ſatisfy and perſwade one another, and ſo reconcile the difference of opinion between themſelves; or by conference of ſome, deputed by the ſtates [f], with the emperor himſelfe, to ſatisfy any doubt which ſhall remaine with him: and if all agree, it paſſeth into an act of the diette.

[e] The ſenſe ſeems to require the particle *to*. (M)

[f] Millerus, p. 136, 137, 138.

The like courſe is held in Sweden, where, in the rickſdagh, if there be difference of opinion in any one of the eſtates from the other, nothing can be concluded in that matter, unleſſe they come to be all of one judgement; to perſwade which, ſeverall committees of the ſeverall colledges are appointed to have conferences with each other, when they endeavour, by the beſt reaſon and arguments they can alleadge, to perſwade thoſe who differ from them to concurre in their opinion. When the difference of opinion is, in any of the eſtates, from the king's judgement; ſometimes by himſelfe in perſon, ſometimes by his ſenators, conferences are had with the diſſenters, and ſatisfaction given: nor cann it be otherwiſe in any councell. And it were to be wiſhed, that in all ſuch conferences, the ſoveraigne commaunder reaſon might ſway, and be ſubmitted to in all humane councells, and affayres.

CHAP.

CHAP. XXX

And treaty.

THIS, and the former word "conferences," ſeeme to have ſome neernes of ſignification; to confer about a matter, and to treate about it, may be taken as much att one: onely ſome have noted this difference, that "to have conference" is only to debate and reaſon the matter, to diſcourſe and deliberate of it togither; butt "to have a treaty" is not only the arguing and reaſoning of the buiſnes, butt the determination of it likewiſe; as a treaty of alliance, or a treaty of peace ſignifies both the conference and debate about it, and alſo the peace or alliance itſelfe made. The peace of Munſter, of Auſbourgh, etc. is the peace att thoſe places debated, and concluded. So when the king ordeins a parlement, and there "to have conference and treaty" with the members of it, he intends both a reaſoning, and conſulting with them; and further, a determination, and reſolution to be had with them, uppon the matters treated on. In theſe conferences, and treatyes with the king in parlement, is, according to the word of the antient priviledge of parlements, allowed a freedome of debate, and liberty to ſpeake their mindes and judgements uppon the matters treated on: otherwiſe the ſame can never come to a full diſcuſſion, nor to a ripe determination of it. If all objections be not freely made, and anſwears as freely returned; and every circumſtance conſidered, and duely weighed (which is the proper way of a treaty, and may be truely called the handling or treating uppon a matter) the reſolution cannot be ſo cleer, and judicious, as where a full liberty of treating is permitted. Yett this liberty of treating, with a prince, muſt be uſed with all modeſty, and fitting regard and diſtance to the majeſty

of

of a prince; and with ſubmiſſion to his judgement; and without any words of ſcorne, or provocation to his fellow members; according to the record of H. 4 [a] they muſt "treate diſcreetly, and as beſeemeth them in publique councell."

[a] 8 H. 4. rot. parl. n. 15.

CHAP.

CHAP. XXXI

With the great men [a].

THE latin word in the writ, heere uſed, "magnates," ſignifies men of chiefe place, rulers, governors, officers, nobles, ſuch as are members of the parlement [b], princes and heads of the citty: whence the chiefe magiſtracy is called magnetarchen; and they termed magnates, "whoſe power and authority is great."

We find the word magnates often uſed by our hiſtorians, when they expreſſe the aſſembly of our publique councells; as in the councell at Hertford [c], under Theodore archbiſhop of Canterbury, it is ſaid, there were preſent the biſhops of England, and the kings, and "all the great men." The councell given to Octavius, the britiſh king [d], was by the magnates of Brittaine. So Vortigerne [e] aſked counſell of his magnates. Uther, the britiſh king [f], uſed to call councells of his magnates; and they made his ſon, Arthur, king. The like is expreſſed [g] of king Egbert. In a parlement aſſembled by king Canutus [h], theſe words "proceres and optimates" are uſed; and they ſaid to be "called, by the king, to his parlement." So king Eldred ſummoned all the magnates of his kingdome [i] to councell: and a number more of the like uſe of this word, in the britiſh and ſaxon times, might be remembred. The word is no leſſe fre-

[a] Cum magnatibus. [b] Livy, lib. v. bel. Maced.—Quorum magna eſt potentia et authoritas. [c] An° 673. Bede eccleſ. hiſt. lib. iv. c. 5.—Magnatibus univerſis. [d] An° 379. Math. Weſtm. [e] An° 376. Malmeſb. hb. i. c. 1. There muſt be ſome miſtake in the date here aſſigned, as Vortigerne did not come to the Throne 'till the year 446. (M) [f] Walſingh. hiſt. Angl. p. 50. [g] Spelm. conc. p. 340. [h] Leidger booke abb. St. Edm. Bury.—Cunctos regni ſui praelatos, procereſque, ac magnates ad ſuum convocans parliamentum. [i] An° 948. Ingulphus.

quent with the hiſtorians of the Norman times [k]; as where it is ſaid, that "king John, and all the magnates of England, had conference togither att Oxford." Butt I ſhould impertinently, perhappes, be thought to ſpend more time, in this note, uppon the worde. The hebrew word which we tranſlate "the princes" ſhall come out of Ægipt, the latine renders "magnates;" and the hebrew word is expounded "great lords," and uſed in that ſence by the Jewes att this day, when they ſpeake of the cardinalls, or other perſons in greateſt place and power. The Romans uſed the word "magnates" among the many appellations of their great officers and governors. We find the word likewiſe uſed, in the ſame ſence, in the lawes of Hungary [l].

Divers other appellations of great officers, and ſuch as are admitted to publique councells, are mett with in our ſtories and records; the moſt antient is that of Brute [m], who is ſaid to call togither for councell "the firſt borne," or fathers of the families, the elders of his people; and when he went to conſult the goddeſſe Diana, he tooke with him "twelve of the firſt borne," or elders of his people. So the councell of Arviragus is ſaid to be the elders [n]; and king Ina is ſaid to make his lawes "by conſent of all my aldermen, and eldeſt wiſe men of my people:" there are expreſt elders, and aldermen; and the latine renders it the ſame, "of all my ſenators, and firſt borne, wiſeſt of my people [o]."

[k] 5 Jo. rot. parl. m. 10. n. 3.—Mat. Paris, an° 1204. Convenerunt ad colloquium ex et magnates Angliae.—Pſal. lxviii. 32. חשמנים [l] Stephen Werbeucz, p^t 1. tit. 2. and p^t 2. tit. 4. [m] Galfr. Monm. majores natu.—Duodecem majores natu. [n] Galfr. Mon. p. 31. [o] Prin. vind. p^t 2. p. 16. Mid eallum minum ealdormannum, ⁊ ðam yldeſtan piran minre peode.—Bed. lib. In. p. 1. Omnium ſenatorum meorum et natu majorum ſapientum populi mei.

This

This appellation of great men, by the name of aldermen, was much uſed, and of great honor in the time of our Saxon anceſtors; with whom an eminent great governor, judge, nobleman and officer, was called an alderman [p]: as Hoveden, ſpeaking of the earles and conſulls of provinces, ſaith, that "with the Engliſh antiently they were called aldermen," that is, eldermen [q]. From hence dukes, earles, reguli, princes and head officers of provinces, cities, and townes, were by our aunceſtors ſtiled aldermen: as the hundred earle, who was a centurion or governour of a hundred; ſo the alderman of the ſouth Saxons; and the elder or alderman of the burough, and of the metropolis, as the elder or governour of Conſtantinople; and in the Saxon ſtory, St. George of Cappadocia is by Afric called "alderman of the ſhire of Cappadocia [r]." So Allwines, under king Edgar, was called alderman of England [s], as holding the place of prince through all the kingdome. And it is ſayd, that in the year 640. Erconbert king of Kent diſtroyed the idols; and commaunded a faſt of lent to be obſerved, "by the authority of his elderſhip" [t] as the Saxons reade it: and in the ſaxon goſpells [u] there is very conſtant uſe of the words elders, and alderman, and elderſhips; and when they expreſſe a great man, or chiefe men, they expreſſe it by the word aldermen. So the ſcribes and chiefe prieſts, and elders of the people are rendred; and the words elders and princes are taken for ſynonima; and for chiefe prieſts and elders they have the ſame

[p] Ealdorman. [q] Annal. pt 2. p. 607. Apud Anglos antiquitus vocabantur aldermanni.—Bede, Florent. Wigorn. Huntingdon, etc. [r] Hundred ealdor.—Suprearxna ealdorman.—ealdor burh.—Epæca ealdorburh.—ealdorman on ðæn rcyne Cappadocia. MS. de vita ſanct. tit. [s] Hiſt. Ramecienſ.—Cambd. Brit. p. 308. [t] Mid þir ealdor lic nerne. Bede hiſt. Angl. c. viii. principali authoritate.

[u] Yldran, yldrum, ealdrum, ealdormannum. Mat. xxvi. 21. and xxvii. 1. 3.—Mar. x. 33. yldrum, ȝ bocrum, ȝ ealdormannum, ðæra racenda ȝ ðara racenda ealdras ȝ ðæn polcer ealdras ðæra racenda ealdras, ȝ þa þlaforðar.

word: and of that word "hlafordas" there will be occaſion to ſpeake elſewhere. In the holy goſpell the ſame word is uſed in the Saxon for high prieſt, and chiefe prieſt; and for the word elders they ſay aldermen, and elders. And ſometimes aldermen for chiefe prieſts, and for captains; as when Jeſus ſaid "unto the chiefe prieſt, and captaines of the temple, and the elders," it is ſo there rendred. The word pitum is uſed for wiſe men, and for the captaines or magiſtrates, and ealdjum for elders. So for elders of the people, the folke's elders; and aldermen prieſts, for the chiefe prieſts. And in the holy ſcriptures, we have likewiſe the word elders uſed to expreſſe the high prieſts, or chiefe prieſts, called the elder prieſts [x].

After the Saxons time the word alderman, denoting an earle or governor of a province, was changed (as ſome ſuppoſe by the Danes) into the word earle, the ſame with elder: and yett the word alderman ſtill remaines in the ſame ſignification, in the chiefe offices and dignities; as in ſome places the head officer is called the alderman, and the chiefe burgeſſes, cittizens; and magiſtrates of the firſt ranke are to this day knowne by the name of alderman, as of London, Yorke, etc. not unknowne to any. In the Norman dialect they uſed to ſay of the king, "our Lord," or more properly, our "elder the king;" and of the great men, praelates, peeres, nobles, they ſay, the lords or "elders" ſpirituall and temporall [y]. In our feudall lawes, the lord is called ſeigneur, that is elder, though he be not a peere. And it is no light argument, out of the antient uſe amongſt us, that the word elder denotes a name of dignity from the originall of it; and

[x] Mat. viii. 31. xi. 27. xiv. 33. heah ꝛacenðum ꝛ ealðonmannum ealðum.—Luke xix. 22. and xxii. 52. to ðam ealðonmannum and to ðam pitum ꝛ ðæꝛ templeꝛ ealðum, etc.—Luke xxii. 66. ꝓolcꝛ ilðan, ꝛacenda ealðenmen.—2 Ki. xix. 2. Iſ. xxxvii. 2. Jer. xix. 1. זקני הכהנים [y] Noſtre ſeigneur le roy.—Les ſeigneurs ſpirituelx et temporaulx.

was taken the ſame with preſbiteri, bicauſe ſeniores or ſenatores, by dignity in latin ſo called, were with us ſtiled aldermen, which is nothing elſe but elders, or eldermen, as in the firſt age the word did ſignifye. And there is no word or appellation, in the cuſtomes and ſtories of the Hebrewes and of all other nations, which had ſo generall a concurrence and ſignification, for great men and nobles, as the word elders had: in the deſcription of their great men in office, power, intereſt and councell, they had a reſemblance to the name elders; and that which was ſignifyed by the words preſbiters, princes, dukes, nobles, commaunders, captains, governors, judges, primates, great men, chiefe men, earles and many other appellations of the like ſence, is alſo ſignifyed by the worde elders [z].

In the holy ſcriptures, both of the old and new teſtament, it is often mett with in the ſame ſence; and the Hebrewe word, for it, both the Latin and Engliſh doe render a preſbiter, and elder [a]. It was a title of great dignity with the Hebrewes, and taken for a judge or governour. This title is given to Eleazer, the ſteward or governor of Abraham's houſe: "And Abraham ſaid unto his eldeſt ſervant of his houſe, that ruled over all that he had," etc [b]. which both the Latin and Greeke do render in this ſence; as we doe, in Engliſh, the eldeſt ſervant. In the ſame ſence it is ſaid, "Goe and gather the elders of Iſrael; and thou ſhalt come, thou and the elders of Iſrael, unto the king of Aegypt. And Moſes and Aaron, went and gathered togither all the elders of the children of Iſrael, and the elders, att the banquett of Jethro:" and the like in divers other places [c]. And the name preſbiter, or elder, was a name of dignity,

[z] Preſbiteri, principes, duces, nobiles, ſatrapae, capitanei, gubernatores, judices, primates, magnates, optimates, comites, conſules, reguli, etc. [a] זקן—Preſbiter ſenior. [b] Gen. xxiv. 2. אל עבדו זקן—Ad ſervum preſbiterum ſeu ſeniorem Τῶ παιδὶ αὐτῦ τῶ πρεσβυτέρω. [c] Exod. iii. 16, 18.—Ex. iv. 29. and xii. 21. and xvii. 6. and xviii. 12.

and ſignifying great men long before the birth of Moſes, both among the Hebrewes, and Aegiptians; as when "Joſeph went up to bury his father; and with him went up all the ſervants of Pharaoh, the elders of his houſe, and all the elders of Aegipt[d]."

To the title and dignity of preſbiter, or elder, doth reſemble that of the patricii and ſenators in Rome, the archontes in Graece, the nobility in England and other nations. And the ſame interpretation of the hebrew word is given, which is in our writ; they are called "the chiefe men, or great men of the children of Iſrael;" and ſo (ſaith Bertram) all the hebrew interpreters doe expound it[e].

Theſe very words doe occurre in moſt of our engliſh parlements, both antient and later, eſpecially given to the peeres in parlement; as that of optimates in the parlement of king Ethelbert, who ſaith, "by the counſell of my optimates, or chiefe men." The like in the confirmation of charters; and they are ſtiled "the chiefe of our magiſtrates:" and we find the wordes primates, and optimates, under king Ethelbald, Offa and many other of our ſaxon kings, expreſſing judges, great officers, governors, and members of their publique councells[f]. The like is in our hiſtorians touching the word magnates, as hath bin before remembred; and requires not more perticular inſtances. It hath bin the word conſtantly uſed in our writs of ſummons to this day, as in our preſent writ. We find likewiſe in the praeambles to ſome of our acts of parlement, "by the counſell of our praelates, earles, barons and other great men[g]."

[d] רָאשִׁים Gen. l. 7. [e] Ἄρχοντες.—Bertram de rep. Judaic. c. v. p. 55.—Optimates ſeu magnates filiorum Iſrael. [f] Anno 605.—Optimatum meorum conſilio.—Thorne col. 1760.—Spelman. conc. etc.—Evident. eccleſ. Cant. col. 2207.—Thorne, c. iii. §. 7. col. 1771. Noſtri magiſtratus optimates.—An° 822, 851, 854, 868, 924, 928, 932, 940, 948, 970, 975, 1007, 1032, 1449, etc. [g] Conſilio praelatorum, comitum, baronum, et aliorum magnatum regni noſtri.

Wheruppon

Wheruppon ſome have apprehended, that by the word magnates, comming after earles and barons, is ſignifyed the knights of ſhires, and other members of parlement which are not peeres; butt of this there may be occaſion to ſpeake afterwards. That the word elder amongſt others, as well as Jewes and Chriſtians, was the moſt antient, generall and largeſt title to deſigne eminent perſons, great rulers, governors and counſellors, is teſtifyed by divers authors [h].

The word "antient" we have from the Italian and French, and all from elder [i]; ſo pope, abbot, father, are all names of dignity, and derived from that ſence of elder [k]. The title of pater patriae, was antiently the moſt honorable among the Romans; but that of papa, ſince the groweth of their hierarchy, bicame the title of higheſt ranke and dignity, and inveſted with the attribute of holynes.

Elder or ſenior, or the other words before mentioned, doe not in the originall of the language, butt by a received uſe and cuſtome of expreſſion, ſignify dominus, or lord; and ſo are given to princes, and to thoſe in greater dignities: as ſir, to a king, prince, or lord; and in leſſer dignities, as in ſpeech to a knight, eſquire, doctor, marchant, and to all ſchollars and gentlemen; ſir T. N. to a knight, in directions and writings; ſir N. to a batchelor of arts; and all of them derived from ſenior or elder.

We find the word elders frequently uſed for the bodyes, or aſſemblies of elders, or preſbiters; as in the texts formerly cited [l]: the greeke worde a ſenate, from the word which ſignifies old men, or elders; as the hebrew word alſo denoteth. And the greeke word for

[h] Sigonius, Menochius, Bertramus, Seld. de ſynedr. lib. i. c. 14, etc. [i] Antianus, antiano, ancienne. [k] Papa, abbas, pater. [l] Exod. iii. 16. and iv. 29. and xii. 21.—Lev. ix. 7.—Nu. xxii. 4.—Γερσια γέροντες.—זקנים—Γερσίας.

"a

" a ſenate," anſweareth thereunto; taking old men, elders, and ſenate for ſynonima. As where it is ſayd unto the children of Iſrael, " thou ſhalt ſpeake," etc. the greeke renders it, to the old men, or ſenate, or elders, the aſſembly of preſbiters or elders of Iſrael. And it ſeemes the rather to be ſo by the text, where Moſes called Aaron and his ſons, " and the elders of Iſrael [m]:" and where the wiſe man ſpeaks of the good wife, " that her huſband is known in the gates, when he ſitteth among the elders of the land, [n]" this is in the ſame ſence as before; and in theſe, and ſundry other texts, the words preſbiters, elders, old men and ſenators are all taken for ſynonymas, and meane the ſame thing. The engliſh ſaxon tranſlation in this place, for elders, hath aldermen, and eldermen [o]; and that of Wickliffe is the ſame; and ſome reade it antients. And that this word elders and preſbiters, in the notion of it, is taken to ſignify the ſtate or order of the elders, the company, aſſembly, congregation or colledge, appears by ſeverall texts [p]: as where " the elders of the people led Jeſus to their councell;" and where Paul ſaith, " The high prieſt doth beare me wittnes, and all the eſtate of the elders;" in which two places of the New Teſtament, the greeke words ſignifying elders, and elderſhip and ſenate, are taken for the eſtate, order, or aſſembly of elders, according to the manner of the Jewes, deduced from the higheſt antiquity unto that preſent age. Luther in the former place hath, " the eldeſt folkes," and in the latter place, " the houſe of the elders." The Netherlanders reade it, " the whole councell of the elders or preſbiters [q]." The Engliſh ſay, " the elders of the people," and " the eſtate of the elders."

[m] Lev. ix. 3.—Γερυσία Ἰσραὴλ.——Lev. ix. 1. [n] Pro. xxi. 23.

[o] ealdonmannum, ealdnar, eldren. [p] Lu. xxii. 66.—Τὸ πρεσβυτέριον Συνέδριον. —Acts xxii. 5.—Καὶ πᾶν τὸ πρεσβυτέριον. [q] Die elteſten des volkes.—Der grantze hauffe der elteſten.——Ouderlingen et den geheeten raedt der ouderlingen.

The

The Rhemiſh have it, " the antients, and all the antients." The French reade, " the antients of the people, and the aſſembly of the antients[r]." All the verſions ſhow the uſe of the word " elders " for great men, and members of publique councells. So the Graecians often uſe the like word for a ſenate; and they, and the pagans uſe it for an aſſembly of elders or ſenators. As where it is ſaid, " they called togither the councell, and all the ſenate of Iſraell;" the Syriack and Arabick ſay " all the preſbiters or elders." And for theſe the word ſanhedrim is uſuall, both in the old and new teſtament, and for the juridicall aſſembly among the Hebrewes, and any councell or conſiſtory alſo of the Chriſtians. And Selden affirmes, that the word preſbiter, or elder, did comprehend thoſe who were choſen into the ſanhedrim, or made judges or teachers of theology[s].

This word elders was alſo greatly propagated, both through the eaſt, and weſterne parts of the world. That of the Aegiptians is before mentioned. The like is of Midian and Moab, whoſe elders are named and explained to be " the princes of Moab," who were ſent by Balack to Balaam[t]. The Cananites, who in the time of Joſhua fled into Africa, and ſetled there, left their manners and language to their poſteritie; and with them the like uſe of the word remained. Among the Carthaginians there is mention of elders, who deſerved to be choſen more for virtue, than for age; and hence was their ſenate as Livy teſtifies: and their colleagues were called elders; as in that ſpeech of Tyrius, " I have private commands to none, publique to the elders;" of which Livy ſaith, and calleth them elders, " for ſo (ſaith he) did they call the ſenate[u]." Out of thoſe elders the ſuf-

[r] Les anciens et l'aſſemblee des γερουσίαν Ισραήλ.—Συνέδριον.—De ſynedr. lib. i. c. 14.

[s] Γερουσίαν.—Acts v. 21.—Πᾶσαν την

[t] Nu. xxii. 4, 7, 8.

[u] Procopius. Vandalic. lib. ii.—Ariſt. polit. lib. ii. c. 9.—Γερόντων, Γερουσία,—lib. xxx. c. 7. et lib. xxxiv. c. 60.—Seniores, ita ſenatum vocabant.

fetes

fetes were choſen, who were chiefe governors and judges in thoſe parts, who were the ſenate. With the Perſians, before the age of fifty, none aſſumed that title; butt after that age, they goe into the number of thoſe who are, and are called elders [u]. The apoſtle ſaith, that a biſhop muſt be blameleſſe [w]; the Syriack and Arabick render it, "an elder" muſt be blameleſſe. That the elders ſate uppon the poliſhed ſtones in the holy circle, we have the teſtimony of Homer; and Euſtathius ſaith, that the antients called thoſe elders, who were moſt honourable: the ſame poet uſeth the word in that ſence in other places. In like manner the Trojans had their chiefe men, generalls, and principall men of the Trojans, by that name ſtiled, who were next unto the king [x]. The like is expreſſed to be among the Lacedemonians, by the greeke authors; as where they ſay, "with the elders (for ſo they call the publique councell) the Lacedemonians would have the augury to be." And the like uſe of this word was among thoſe of Crete, and other parts of Greece [y]. In Alexandria they had their chiefe ſenators, or elders. In a miſſive to the chiefe men of the people of Alexandria, the ſame word is uſed; and it cannot be meant of the clergy, bicauſe it gives commaund to looke to the watches: which notwithſtanding the common acceptation, that among the Greekes the word γερόντων ſignifies the ſanhedrim of elders, makes it evident, that it alſo ſignifies temporall governors or great men; and that likewiſe appears by the inſcription of an antient marble brought out of Smirna into England, and ſome others of the earle of Arundell's [z]. Agreeable heerunto is that of Plato: "O Solon, Solon, ye Greekes are alwayes children; there is no graecian

[u] Zenophon. Cyropaed. Briſſon. de regn. Perſ. lib. ii. [w] 1 Timothy iii. 2.
[x] Iliad α et ω. 1. — οἱ δὲ γερόντες.—ἡγήτορες Τρώων.—Optimates, duces, ſeu primates Trojanorum. [y] Plutarch. Ariſt. Ariſtoph. Dem.—Cicer. orat. in Lepid.
[z] Alciatus. Gothofred.—Ἀρχιγέροντες. Primatibus plebis Alexandrinae.—Theodoſ. lib. xiv. et xxvii.—Lib. i. Juſtin. tit. de epiſc.

elder,

elder, you are all young men! for you have no opinion of them, by antient tradition, nor any diſcipline gray-headed by time [z]."

Trochilus was called king and elder; and the preſbiters, or chiefe men, were wont to be called old men or elders. Among the Greekes and Latines it was uſuall to ſay, "nothing is more antient," for nothing is better. Severus made his ſon chiefe of the judgments in Britain; and gave unto him aſſiſtants, out of the elders that were his friends. And as the word was in uſe with the Pagans of the eaſt for a name and dignity, ſo were alſo the words, a ſanhedrim, a councell, a church, an aſſembly of elders, all ſignifying the ſame thing [a]. Among the Arabians the word alſheich, or xeque, ſignifies an elder; not as one that intends religious offices only, butt given to morally learned men, and to princes, in the commonwealth civilly. Avicen, their famous phyſitian, is termed the elder and prince [b]. And the ſame title is given by them to Mahummed, and it is a frequent title in the arabick manuſcripts; as that of the ſenior de Chemia his booke, mentioned by our old poet Chaucer, "As his boke ſenior wol beare witneſſe &c [c]."

The chiefe magiſtrate of the Tyrians is called elder; and men of other dignityes of leſſe account are likewiſe ſo ſtiled [d]. And it is related, that the Phoenicians made themſelves a captaine, not by haereditary ſucceſſion butt by praerogative of merits, whome they called an elder [e]. The court of the Areopagites of Athens, and the councells of other commonwealths, uſed to be ſtiled ſenates, or an

[z] In Timaeo. [a] Ariſtot.—Dionyſ. Halicarnaſ.—Nihil antiquius, pro nihil melius.—Συνέδρες.—Synedrios.—Aſſeſſores.—Συνέδριον, ἕκλη ἐκκλησια γερόντων.
[b] Senior princeps, et ſenior et princeps. [c] The chanon's tale. [d] Antonin. pt 2. tit. xvii. c. 9. [e] Fortalit. fid. lib. iv.

assembly of old men or elders [f]. And many instances more out of the eastern authors and histories, so much as is extant of those nations, may be found; wherby it is apparent, that the word elders was in generall use among them, for persons of eminent worth, dignity, office and wisdome, for magnates, great men. And in like use it was also in the westerne nations, who called the members of their publique councells, senators; and the councell, the senate of Rome, which was instituted by Romulus of those who excelled in counsell, wisdome, and virtue. Wheruppon it is sayd, that unlesse counsell, reason and knowledge, had bin in the old men or elders, our aunciesters had not called the supreame councell by the name of senate; and senators were not so called, untill they were ranked among the elders [g]. The word senior is used by the latine authors, and that before Romulus; and so farre from signifying old age, that the age of a senator was butt 25 years, or as some hold, but twenty, when he might be admitted [h].

The senate of women, instituted by Heliogabalus, called them "senators of both sexes, and senatrices." The Penates are called, senators of the gods: and those who were usually stiled the chiefe men, the higheſt men, the peeres, the fathers, the best of the nobles and the nobility, are called also by the Romans, senatores and senatus [i].

Of this use the word elder was throughout the westerne nations, and all Europe over. In Denmarke and Sweden the senators, who are the rick's senators the councellors of the kingdome, have the

[f] Sigonius.—J. Sarisburiens. etc.

[g] Cicero in Catone majore.

[h] Virgil. Æneid. i, vi, viii.—Livius, lib. xxxvi. c. 32.—Sigonius, lib. ii. c. 2.—Lipsius, in Tacit. annal. n. 52.—Rosin. Livy. Cassiodor.

[i] Lampridius. Vopiscus.—Senatores utriusque sexus, et senatrices.—Marianus in vit. S^ti Desid.—Optimates, summates, proceres, patres, optimi nobilium, et nobilitas.

higheſt ranke among them; and the title of excellence, taken by every one of them. And every where in Chriſtendome, and other countryes, thoſe in command, dignity and honor, the counſellors and great men, have the title of ſenators and elders. In the barbarous Latine, Italian, French and Spaniſh, ſeignior and ſeigneur, which is butt ſenior or elder, is uſed for dominus [k]. And thus it was in relation to vaſſalls, wherof there are teſtimonies among the Weſtro Goths, and Longobardes, and other lawes, "no land without a lord." So they ſay, "our lord and elder the king; and, thou haſt killed thy elder, or lord." In the acts of the councells, and monuments in Spayne, eſpecially in the time of Charles the Great, held in France, the words lords and princes uſed to be expreſſed ſeniors, or elders: as "to his elder," or lord, the excommunication muſt be made knowne. From the latine ſenior comes ſignior, ſeigneur, ſeigniori, all from elders; alſo ſieur and ſire contracted from that of ſenior. And for domina, lady, ſignora. Seignioria, ſignoraggia, ſignoreggiamento, ſennorio and ſeignurie for "lordſhip, empire and principallitie [l]. God is called ſignior, ſeigneur, ſennor by the Italians, French and Spaniſh; as in latine they ſay, "O Lord our God [m]." And at this day, when they ſpeake to kings, princes and other great men, they uſe the words ſeigneur, ſieur, ſire and the like, from ſenior, all of them derived from that word elders.

The next word, which I find generally to have been in uſe for expreſſing of great men, is that of prince; which in the text is by the ſyriack rendred, in our word, magnates great men [n].

[k] Formul. c. ii. Anſegiſ. apud piſtas an° 869. c. viii, ix. [l] Nulle terre ſans ſeigneur.—Gallant du francalee, c. vii.—Dominus et ſenior noſter.—Cap. Car. Calv. Syn. Worm. c. ii. p. 8.—Occidiſti ſeniorem tuum.—Burchard. decret. lib. xix. c. 34.—Reſp. Hiſp. lib. v. c. xi.—Domini et principes.—Seniori ejus.—Burchard. decret. 11. c. iii.—Dominatus, imperium, principatus. [m] Domine Deus noſter. [n] 2 Chron. xxx. 2.

The word prince is agreed to be derived from the latine word princeps, the proper acceptation wherof is the ſame with primus, the firſt or chiefe; and ſo it is rendred in the French, "the chiefe men [o];" and in this ſence it is often uſed by the Latine authors. "Wheruppon, he who in the citty did excell the reſt in authority, and who obteined the firſt place in dignity, was called prince [p]:" and this uſe of the word was taken up generally by the latin authors deſcribing great men, and perſons of the higheſt ranke and quality. The greeke word for "princes," comes from the ſame ground; and the word, from whence it is derived, ſignifies, "I am the beginning, the author, the original, the firſt [q]." The Athenians had the like word, derived from that word which ſignifies alſo the firſt. Anſwerable wherunto is the ſwediſh word foerſt for prince, that is, firſt, and chiefe: the like in Germany, where a prince is called furſt, as furſt von Anhalt, the prince of Anhalt. The like is in Denmarke, where they uſe the word forſt for prince. In the Roman armies they made choyce of the ſtrongeſt, and higheſt bodyed men, who for the prime of their age were called principes; and from thence the ſecond place, or warde in the maine army, was called principia [r]; wheruppon is that ſpeech of Thraſo in Terence, "I will follow the principes," therby chooſing to himſelfe, the beſt and ſafeſt place [s].

Our great doctor in titles of honor, to whom I acknowledge myſelfe much indebted in this and other points of learning, holds, that all thoſe, who had barons under them, were duely ſtiled princes [t]. And accordingly, in the agreement betweene prince Lewellin of

[o] Les principeaux. [p] Cicero, Virgil, Ovid, Pliny, etc.—Quique primum dignitatis locum obtineret princeps appelleretur. [q] Ἄρχοντες.—Ἄρχω.—Πρύτανευς.—Πρῶτος. [r] Godwin. Rom. antiquit. p. 259. [s] Terent. Euph. act. iv. ſcen. 7. Ego ero poſt principia. [t] Seld. Tit. hon. p[t] 1. f. 275.

Wales

Wales and king Edward the firſt, one of the articles was, that the homages in Wales ſhould remaine to the king, except five baronies in Snowdon; bicauſe he could not conveniently call himſelfe prince, unleſſe he had ſome baronies under him [u]. Selden goes further, that earles and all above them are (ſaith he) cleerly princes; as in France, where twixt viſcount and count is a ſpeciall dignitie of princes [w].

We find in the hiſtories, where our parlements are mentioned, the name of princes frequently given to the great men, the lords, members of it; as the king "with conſent of my princes;" and "by authority of the kings and princes," as well of Scotland as of England, a graunt was confirmed. In another place is ſaid, "by the common councell of the biſhops and princes;" it was not pleaſing to the princes; and divers of the like expreſſions are obvious in the hiſtorians of thoſe times [x]. So it is ſayd of the marryage of H. 1. that it was "by the councell of the princes;" and in his time matters are related to be done "in the aſſembly of the princes." Agreeable heerunto was the opinion of the judges in king James his time, that there are other princes beſides the king's eldeſt ſon, as dukes, marquiſes and earles; of whom there will be occaſion to ſpeake perticularly heerafter [y].

[u] Tho. Walſingham an° 1278. Quia ſe principem convenienter vocare non poteſt, niſi ſub ſe aliquos barones haberet. [w] 1 Tit. hon. p. 256.

[x] An° 605 et 700. — Cum conſenſu principum. — Authoritate principum. — Tho. Walſing. — Mat. Paris. — Hoveden. — Radûs de Dicto, etc. An° 707, 720, 747, 787, 799, 824, 835, 966, 970, 982, 1012, 1014, 1037. [y] Eadmerus, lib. vi. p. 136. Conſilio principum. — In conventu principum. — H. 14. Ja. BR. f. 31. b. 32 MS.

In

In the text, " And thou Bethlehem in the land of Judah, art not the leaſt among the princes of Judah, for out of thee ſhall come a governor, that ſhall rule my people Iſrael [z]:" the greeke tranſlation for " princes," is the ſame as for " governors," and by the latine, rendred " in ducibus," captaines or generalls of armyes as the greeke word alſo denotes; and the Syriack is, " amongſt the kings; and out of thee ſhall come a king" &c. The ethiopick is, " of the princes; and out of thee ſhall be borne a king, a governor" &c. The arabick hath it " king, and governor;" ſome ſay " princes, ſome, dukes, ſome, kings and governors:" all agree it was intended of great men, and of the greateſt the Meſſiah to come.

The Dutch annotations expound the word princes, to be " rulers of thouſands, governors and leaders of the people, great men." The greeke worde [a] hath the ſame ſignification, as hath bin remembred, which is tranſlated, " princes, dukes, chiefe judges, magiſtrates," and the like great men. The hebrew word [b] for " princes," ſignifyes thoſe who are rulers, that have and exerciſe dominion. The firſt mention of the word that I remember, is of the princes of Pharaoh, then in uſe in the time of Abraham [c].

The Hebrewes [d] had princes of tribes; and they were alſo called princes of the congregation, and the princes of Iſrael, and princes of provinces, and captaines of tribes, of which latter Sigonius doubts. Theſe princes had power of judicature, and uſed in great matters to be ſummoned to meet the king in councell; and did

[z] Mat. ii. 6.—Ἐν τοῖς ἡγεμόσιν Ἰούδα ἡγέμενος.—Dux qui regat populum.—ἡγεμονεύω, duco exercitum, et ἡγεμονία, principatus imperium. [a] Ἄρχοντες. [b] שרי
[c] Gen. xii. 15. [d] 1 Ki. xx. 14.

bind

bind themſelves by oath to doe that which was for the publique intereſt [e].

Our Saviour ſeemes to allude to this, when he promiſeth his diſciples to ſitt uppon 12 thrones, judging the 12 tribes of Iſrael [f]. And the Pſalmiſt ſaith, " the rulers (which ſome reade princes) take counſell togither" &c [g]. Their power of judicature appears, where they with Joſhua divided the countrey; and that they were a councell, where they did ſweare a league with the Gibeonites, and in other texts [h]. Bertram ſaith that every father of a family was therin " a prince, a king, and a prophet;" and that " thoſe who were over civill cauſes, in the higheſt judgment, were called princes and patricii [i]."

In the tranſlation of the text of Matthew—" Neither be you called maſters; for one is your maſter, even Chriſt;" the greeke word is properly rendred your prince or teacher: and another verſion of it is rendred, " Be not called captaines, princes, chiefes, fathers, teachers; for one is your captaine, prince, chiefe, father, teacher, Chriſt [k]." From hence may cleerly be confuted that fancy, lately increaſed into an opinion and practiſe, that civill reverence and diſtinct titles to great men ought not to be given: no man to be called prince, lord, no not ſir or maſter; butt all ſuch appellations they hold unlawfull: and their tenents are rather to be pittyed, then to be perſecuted, which will but increaſe their number. By the ſame argument, that they muſt not call any one lord or maſter, they muſt

[e] Menochius, lib. i. c. 6. col. 42. [f] Mat. xix. 28. Lu. xxii. 30.
[g] Pſal. ii. 2. [h] Joſ. xix. 51.—Joſ. ix. 15, 18, 19. [i] P. 28, 129, 142. Princeps et Regulus et propheta.—Qui ſupraemo judicio civili profuerunt dicti ſunt principes et patricii. [k] Mat. xxiii. 10.—Ὁ καθηγητὴς ὁ Χριστός.—Seld. de ſyn. l b. ii. p. 338.

neither

neither call any one captaine, teacher, no not father; for all theſe ſignifications are borne by the worde, as well as maſter. It will not be impertinent, upon the title of great men and in this time, a little to inquire into this opinion; the ground wherof is deduced from a miſtake of that text of St. Matthew, where our Saviour inſtructs the multitude and his diſciples, ſaying, "the Scribes and Phariſees ſit in Moſes ſeate:" that is, they were rabbins in dignity, fully ordeined, and members of the ſanhedrim; who, in the time of Chriſt and his diſciples, did flouriſh before others in the preſbiterian dignities, as farre as the Romans permitted them; and taught according to the inſtitutions of Moſes, and upheld the continued ſucceſſion from him; exerciſing that juriſdiction which was averſe to that introduced by our Saviour. The text goes on—"All therefore whatſoever they bid you obſerve, that obſerve and doe; butt doe not ye after their workes." To the lawfull commaunds of thoſe in authoritie they were to ſubmitt, and to obey them; but not to doe after the workes of the Scribes and Phariſees. And Chriſt gives the reaſon, "for they ſay and doe not:" they make profeſſions of godlines, but they doe not live anſwearable therunto; a courſe too much followed in our times. Another reaſon is given; "for they bind heavy burdens, and grievous to be borne, and lay them on men's ſhoulders; butt they themſelves will not move them with one of their fingers." This is the admonition of our Saviour to his diſciples, not to doe thus as the Scribes and Phariſees did; not to do to others what they would not have done to themſelves; not to impoſe burdens on others which they would not beare themſelves; which ought to be obſerved, both as to ſpirituall and temporall burdens, by all great men, and members of publique councells, and by all in authority[1]. The conſtitution of our parlement is excellently equall;

[1] Mat. xxiii.—V. 2.—De ſynedr. Seld. lib. ii. p. 346, 335, etc.—V. 3.—v. 3.—V. 4.

that

that what burdens they lay on others, they muſt beare their ſhare of them. The text ſaith further of them, " but all their workes they doe for to be ſeen of men; they make broad their phylacteries, and inlarge the borders of their garments [m]:" they are full of vaine oſtentation; they looke more after the prayſe of men than of God. Their phylacteries were ſcrolles of parchment, in which the law was written; and they ware them, and made them broad, that they might ſeeme to be the greater obſervers of them; and inlarged the borders of their garments, the fringes wherof were to putt them in mind of the commaundements, wherof they would outwardly appear to have a larger memory than others: butt their pride follows, " and love the uppermoſt roomes att feaſts, and the chiefe ſeats in the ſynagogues [n]."

In the houſe of lords, in our parlement, every great man takes his place according to his ranke, which is certainly knowne: and in the houſe of commons, as he comes; and there all are equall, to avoyd pharaſaicall pride.

The further pride, and ambition of theſe great men, appears in the next verſe; " that they loved greetings in the marketts, and to be called of men, rabbi, rabbi [o]." The greetings or ſalutations are heere putt diſtinct from the being called rabbi, and are ſeverall things: the Phariſees tooke a pride to have reverence done to them in the greateſt concourſe of people, where moſt might take notice of it, (in the marketts) and publiquely greet them, and give honor to them.

[m] Matt. xxiii. v. 5. [n] Nu. xv. 38.—Matt. xxiii. 6. [o] V. 7.

Our engliſh poet had not ſo great an opinion of theſe greetings, and honor, where he ſaith —

" Oh what is honor butt an exhalation,
A fiery meteor ſoone extinct and gone;
The breath of people, and the tounge's relation
Which ſtraight is ended when the voice is done;
A morning dew dry'd up with noon dayes ſun! &c [p].

The title and honor of rabbi among the Jewes was of greateſt honor, and given to their greateſt men; and heere it is expreſſed with a doubling, " rabbi, rabbi,[q]" to denote their ambition the more. Our Saviour proceedes to his inſtruction; " butt be not ye called rabbi;" that is, be not ye ambitious, like the Phariſees, to be of the rabbinicall dignity, to be made rabbins, great men, members of their great ſanhedrim, judges according to their inſtitution: " be not called rabbies," that is be not rabbies, as the word to be called ſignifies to be the thing, to be ſo created; as in that paſſage of Ruth [r], where the elders ſay to her in their benediction, " be famous in Bethlehem." The Chaldee, Syriack, and Arabick render it, " her name ſhall be called in Bethlehem:" ſo the ſpaniſh Jewes, and others and as many ſay, thou ſhalt be, thou ſhalt have a name famous in Bethlehem; as the ſame thing to be called ſo, and to be ſo. Which is alſo expreſt by the evangeliſt; " bleſſed are the peace makers, for they ſhall be called the children of God:" that is, they ſhall be ſo. And a little after; " he that ſhall breake theſe commaundements, etc. ſhall be called the leaſt in the kingdome of heaven; and he that ſhall doe, and teach them, ſhall be called

[p] MS. of the life of E. 2. [q] Math. xxiii. 8. [r] Ruth iv. 11.—Y lama nombradia, etc.

great; that is ſhall be leaſt, and ſhall be great in the kingdome of heaven [s]. The like may be noted from that bleſſed prophecy: "behold a virgin ſhall conceive and beare a ſon, and ſhall call his name Immanuel;" as his name, ſo himſelfe was, God with us [t]. Thus Cauſabone takes the greeke word to be called, the ſame as to be ſo. And the like among the latines: as with the antient lawyers, to be called is to be ſubſtituted in a place; "to be called to an inheritance, to be called to offices or honors," is to be inheritor, and to be in offices and in honors [u]. And with us, to be called by writ to the lords houſe is to be created a baron; to be called by a writt to be ſergeant att law is to be made a ſergeant; to be called to the bench or barre, in our innes of court, is to be a bencher or barriſter; ſo to be called rabbi is to be that great man, that magiſtrate to whom the Jewes gave that appellation. Butt our author cites a M. S. of his owne, with this verſion; "you ſhall not call them maſters," from whence is concluded, that theſe titles ought not to be given to great men: and it is true, that our Saviour forbids his diſciples to affect this dignity of preſbiters; and poſſibly would not have them acknowledge it in thoſe who, by virtue therof, would perſecute his doctrine and diſciples. But all other verſions run as our tranſlation; "be not ye called rabbi;" that is (as hath bin ſhowed) be not yee of that dignity, and ſuch great men and officers who are ſo contrary to my doctrine, and diſcipline. It follows in the text; "for one is your maſter, even Chriſt; and all ye are brethren." The greeke word is rendred by the latine, "prince, and doctor [w]:" Luther, and the engliſh and belgick tranſlations have maſter, not doctor, though they are much the ſame; and the word maſter is of a larger ſence than

[s] Matt. v. 9.—Matt. v. 19. [t] Iſa. vii. 14. [u] Καλεῖσθαι pro τοῦ εἶναι, —L. xix. Tit. de injuſto rumpto, etc. teſtamento.—Lib. ii. D. tit. Unde cognat. Vocari ad haereditatem: ad munera vel honores vocari. [w] Διδάσκαλος, καθηγητὴς, princeps, doctor.

we uſe it, and ſignifies one greater than others, and magiſtracy and government come from it [x]. Heere is alſo objected; if we be all brethren, why ſhould there be a diſtinction of titles, and great men? The diſtinction is plaine, in Chriſt and his doctrine, and the profeſſion and practiſe of it; we ought to be all brethren, and to agree as brethren (oh! that we did ſo) in his truths. But as to government and magiſtracy, a diſtinction and order is neceſſary, and injoyned; and we are to pray for kings, and all that are in authority; and we are to render honor to whom honor is due; and they are reproved who deſpiſe government, and are not afrayd to ſpeake evill of dignities [y].

Our text goes on; "and call no man your father, uppon the earth; for one is your father which is in heaven." The rhemiſh tranſlation ſaith; "and call none father to yourſelfe, uppon earthe [z]." That of Wickliffe is, "and nyle ye clepe to you a fader, on earth." Luther and the Belgick agree; only ſome other verſions doe leave out the word "you, and yours." The french and engliſh tranſlations are the ſame [a]. And it were a ſtreined collection heeruppon, that for a childe to call his naturall father ſo is forbidden. Butt the ſence of the former verſes is heer continued: thoſe who were of the rabbinicall dignity were called fathers, as the higheſt titles for their great men; ſo there was the father of the ſanhedrim; and in the generall title of the Talmudes, is the chapters of the fathers [b], and ſo were they of the rabbinicall dignity ſtiled. And our Saviour admoniſheth his diſciples, not to call any of thoſe rabbins their father; which could be ſcarce otherwiſe, if they were ſo ordeined; and

[x] Alciat. parerg. viii. c. 10.—Feſtus, in magiſterare. [y] 1 Tim. ii. 2.—Rom. xiii. 7.—2 Pet. ii. 10. [z] Matt. xxiii. 9.—Und ſolt niemand vatter heiſſen.—End en ſult niemandt uwen vader noemen. [a] Et n' appellez aucun en la terre voſtre pere. [b] Capitula patrum.

would

would be the greater daunger to divert them from the diſcipline of Chriſt, wherof they were to be followers, and to ſucke in thoſe manners which would corrupt it. As to the words " heer uppon the earth," every one knowes by the word earth to be often meant the whole world; and ſo the land of Iſrael and the land of Judah, often in the Scripture, is to be underſtood; and elſewhere, for the land ſubject to the government of the Hebrewes; and the land, in a received cuſtome of ſpeech with the Hebrews, only to ſignify the land of promiſe, of the Iſraelites [c]. And ſo the arabick bookes may be underſtood, that this interdiction was threefold; of names or titles within that land, in that commonwealth, to be uſurped, given, or taken; nor out of that land, any where, was the uſe of thoſe names and titles of great men, proper only and belonging to the Hebrewes: and therfore this interdiction cannot be forcibly urged or applyed to names, dignities or titles in other nations. The text is further; " neither be you called maſters; for one is your maſter, even Chriſt." Other verſions inſtead of maſters have it, " be ye not called princes, primates, dukes, governors; for Chriſt is your prince, primate, duke, governor [d]." No man will inferre heeruppon, that bicauſe Chriſt is our governor, therfore we muſt have no other governour as to our civill governement: or bicauſe Chriſt is our maſter (as the engliſh, Luther and the belgick tranſlations render it) therfore there muſt be no more maſters and ſervants; which relation is often mentioned after this, and rules given by the Holy Ghoſt, for the duetyes of it. Butt the cleere meaning of this whole recited text, and of the ſubſequent verſes, is to forbid the diſciples of Chriſt to be proud, or to be ambitious of greatnes and power, or to labour to get into the rabbinicall dignity and office as the Phariſees did;

[c] Terram Iſraelis.—Τὴν Ἰουδαίαν γῆν.—ארץ Τὴν γῆν, terram. [d] Matt. xxiii. 10.—Principes, primates, duces, gubernatores.

wherby

wherby the diſcipline of Chriſt might be perverted: that they ſhould not exerciſe the judiciall ſynedryall faculty and dignity of the Jewes, nor mixe themſelves in thoſe matters. Butt heer is no prohibition att all, of giving civill honorary titles to men, according to their rankes and the cuſtome of their countreys; the which ſeemes not att all to be forbidden by this text, or any other in my remembrance; butt rather to be juſtifyed, if not injoyned by divers holy ſcriptures, and by the primitive and later Chriſtians practiſe therof. As where St. Paul ſtiles himſelfe "a doctor of the Gentiles;" that is a rabbi, maſter, or teacher; and the like afterwards, "a preacher, an apoſtle, a teacher of the Gentiles." The like appellations of rabbins are found in ſeverall other texts, as well as of prophetts and teachers; "and firſt apoſtles, ſecondarily prophets, thirdly teachers" are reckoned; and in another place, apoſtles, prophets, evangeliſts, paſtors and teachers [e]. And the expreſſe titles (ſaith Selden) of maſter, doctor, rabbi, father, abbot, primate, preſident and the like, were every where, throughout all ages of Chriſtianity, moſt uſuall, and undoubtedly given and taken notwithſtanding this interdiction which, by the opinion of antient and later times received, did not pertaine to any other land, commonwealth or age butt that wherin it was ſpoken [f]. And theſe titles before mentioned were given and taken by the primitive and later Chriſtians, followers of the apoſtolicall diſcipline, in all times, out of the land of Iſraell, notwithſtanding that interdiction. We find them often, in ſalutation and ſpeech, given to Chriſt himſelfe; as St. Peter ſaith to him, "maſter, is it good," etc. And againe, "maſter, behold the figtree," etc. So his diſciples ſay to him, "maſter, eate," etc. And, "maſter, who did ſin?" etc. wherin the word rabbi is uſed. And

[e] 1 Tim. ii. 7.—Τὸν διδάσκαλον τῶν ἐθνῶν.—2 Tim. i. 11.—Acts xiii. 1. 1 Cor. xii. 28.—Epheſ. iv. 11. [f] De ſynedr. lib. ii. p. 346.

Nathaniel

Nathaniel ſaith to him, " Rabbi, thou art the ſon of God," etc. And the like in many other places. To John is given the title of rabbi [g], and we doe not find it condemned. And the admonition, " be not called rabbi," cannot be extended to ſalutations; which are only in the power of him that makes or giveth them, and not in the power of him to whom they are given. The perſwaſion of divers in our time, uppon a miſapprehenſion of this text in St. Matthew, may excuſe this digreſſion.

I returne to the title of princes which occaſioned it: which we find alſo, among the Jewes, to have bin applyed ſometimes to the chiefe prieſt, who is often called the prince of the people; which our tranſlations render the ruler of the people. They are reckoned togither princes, captaines, rulers, king's ſervants, nobles, judges and the like, in ſundry places of Scripture [h]. The prophet ſaith of Tyre, " whoſe merchants are princes, whoſe traffiquers are the honorable of the earth [i]."

As it was among the Hebrewes, ſo in other nations, the great men, rulers, officers, governors, nobles, counſellors are ſtiled princes: as the princes of Pharaoh, the princes of Moab, of Midia, of the Philiſtines, of Ammon, of Perſia, of Edom, of Babilon, of the North, of the Gentiles, and princes of the world [k]. The graecian archontes were the ſame, as hath bin noted; and the like acceptation of the word, among the Romans. The captaine, whom the young men choſe for their ſports, was called " the prince of the youth." The

[g] Mar. ix. 5.—Mar. xi. 21.—Jo. iv. 31. and ix. 2. and xi. 8.—Jo. i. 49. and iii. 2. and vi. 25. and iii. 26. [h] Acts xxiii. 2. Hugo Grotius ad com. 5.—1 Ki. ix. 22.—Pro. viii. 15, 16, 17.—Dan. iii. 2, 3, 27. [i] Iſa. xxiii. 8.
[k] Gen. xii. 15.—Nu. xxii. 8.—Joſ. xiii. 21.—1 Sa. xviii. 30.—2 Sa. xi. 3.—Eſt. i. 14.—Jer. xxxviii. 4.—Ezek. xxii. 29.—Math. xx. 25.—1 Cor. i. 6.

emperors

emperors themſelves tooke uppon them the title of prince, inſtead of king; as Auguſtus tooke the governement uppon him under the name of prince[l]. And Suetonius ſaith of Caligula, "there was not much wanting, butt that he ſhould preſently take uppon him the crowne, and change the forme of a principality into that of a kingdome." The title of prince of the ſenate (which was knowne familiarly in Rome, and ſo might be uſed without envy) furniſhed Auguſtus, and his ſucceſſors, with the title of prince.

In Naples there are many who ſtile themſelves princes; as the prince of Benevento who was before a duke, the prince of Capua, of Tarento, of Salerno, and the like; who are butt great men and nobles of Italy.

Villeroy ſpeakes of the prince of Sicily. Paſquier ſpeakes of the great men of France; being united "they doe make a generall body of all the princes and governours, by whoſe advice the differences were compoſed between the king and his people[m]." Haillan ſaith, that "Pepin aſſembled the generall body of his princes and great men[n]:" and frequently the nobles and great men of France are called the princes. So they have bin in Germany from ancient time. Tacitus relates, that the princes of Germany did conſult of the ſmaller matters[o];" and mentions the "hundreds of the people" joyned to the princes, and their power of judicature. Butt of later times it is ſayd, that none is a prince butt he who hath a territory. Yett att this day the 7 electors are called princes; then there is, in

[l] Hoſpin. de orig. feſt. et Roſin. lib. vii. c. 3. Princeps juventutis.—Tacit. anal.—Nomine principis ſub imperium accepit. [m] Recherches de la France, p. 44.—Se compoſa un corps general de tous les princes et gouverneurs, par l'advice des quels, etc. [n] F. 84. [o] De moribus Germanorum.—De minoribus rebus principes conſultant, etc.—Lib. vi. Centeni ex plebe.

their

their dietts, the colledge of "ecclesiasticall princes, and of temporall princes," who are the great men and nobles of Germany [p]."

To all these severall appellations may some be added in generall; the perticulars being reserved for their proper place. In England they had very antiently the title of consuls for their great men; as Hengist is said to be the first consull, and duke from Germany, of the english nation [q]. And the name consull is frequent in the saxon lawes, and historyes of those times. They had also the titles of etheling, thane, thegen, "heretoche," patritian, halfe koning, holdes, highgereves, masse thanes and world thanes, vidams, rulers, sub-rulers, valvasours and divers others: and they had most of the same titles for great men in Scotland [r].

The Hebrewes had the title of chiefe of the fathers, heads of tribes, heads of families: they had the word nasich, that is anointed, and signifies prince, father, doctor, teacher, a guide, a duke, a captaine. The word chasmannim rendred great men, and geber a governor or ruler, shophetim for judges, sar a prince that exerciseth dominion, and the like [s].

The appellations of great men of the Graecians have bin remembred, and most of the latine titles; who had also very many others that doe occurre in their authors, whose language and courtship afforded them a large scope of expressing their veneration of great

[p] Knichen. Com. ad duc. Saxon. c. iv.—Millerus de ration. stat. imper. German. c. xii.—Principes ecclesiastici et principes politici.

[q] Ethelwerd, lib. ii. c. 2. Primus consul et dux de Germanio gentis Anglor.

[r] Heretoga.—Regulus, subregulus, praepositi, vice comites, vice domini.—Mejre degner j poplo degner.

[s] גביר, שפטים, שר, השמנים, נסיך, אלף

men, and ſeeking to gaine their favour by flattering titles and magnifying their power; wherby they ſought to pleaſe them, and to obtaine their own deſignes by theſe means, att which they were as forward as any other nation[t].

In Germany they have the titles wherof there will be occaſion to ſpeake perticularly; as of thoſe in France who have alſo their vidams, chaſtellains, banrents * and bannerets. The like titles are in Spaine; and that of ricos hombres, which is a title of dignity and of great men among them, though the word hombre rico is ſimply for a rich man[u].

The lawes of Hungarie mention the ſame titles with other nations; and beſides, the parochiani, vaiwods and bani that is principall magiſtrates. The like of Bohemia. And their titolati in Naples[w].

In Sweden they have the ſame titles as in other countreys, and much agreeing with the Germans, in ſome of them. They call them anſes who take care of great affayres, of matters of peace and warre and common ſafety; then they have their governours of territories or precincts; and generally they call a great man, an eminent perſon, an adelſman a kind of elder[x].

[t] Antiſtites, magiſtratus, heroes, clariſſimi, praefecti, ingenui, illuſtres, magnifici, honorabiles, inclyti, moderatores, ſatrapae, aulici, capita, conſiliarii, judices, dynaſtae, megiſtanes, potentes, tribuni, domini. * Vid. Selden's Titles of honour, p. 865, 1058, which ſeems to appropriate this title to Scotland. (M) [u] Alexio Venegas apud Guardiolam de nob. c. xl.—Salazar de Mendoza, lib. i. c. 9.
[w] Steph. Werbuez. p[t] i. tit. 2. et p[t] ii. tit. 4. [x] Hoffdinger, & landts hoffdinger.

To

To all theſe titles, and great men, ſome few cautions may be proper. They are called elders, and they ought not to give the counſell of young men to their prince, ſuch as Rohoboam tooke to his great damage[y]: butt they muſt give the counſell of old men, ſage and ſtayed, and grounded uppon experience, and tending to moderation and peace. They are called princes, higheſt and firſt among the people, and are like the tall caedars in Lebanon, eminent above the lower ſhrubbes; they ought to be the more carefull what counſell they give to their maſters: they muſt not doe like the princes of Pharaoh, who ſeeing Sarah, (who was fayre) they commended her before Pharaoh; and ſhe was taken into his houſe[z]. Uppon this text the dutch annotations ſay, that theſe princes were the great men of Pharaoh's court, who (ſay they) commonly ſeeke to pleaſe their maſters with ſuch kind of ſervices[a]. Butt more ſevere is the expoſitor[b], who ſaith, "firſt the common people admire and publiſh the beauty of Sarah; the fame wherof preſently comes to the princes, and from them to the king, to whome Sara is brought either (as it ſeemes) by his commaund, or (ſaith he reproachfully) by the luſt of his courtiers. Behold therfore (ſaith the expoſitor) the licentiouſnes of great men, the paraſiticall ingenuity of courtiers, who uſe to gett the favour of their kings by ſuch ways of baſeneſs." This may be a good caution to princes, not to lay low and profligate their honors, and conſciences, to ſerve unlawfull ends; leaſt the prince of princes ſend his plagues (as he did in this text) uppon the perſons, and houſes where ſuch wickednes ſhall be counſelled and practiſed. They muſt principally indeavour to act, and adviſe for the honour of God in the firſt place, and for the good of their king and countrey; which

[y] 1 Ki. xii. 10. [z] Gen. xii. 15. [a] Publiſhed an° 1657.

[b] Paraeus in comment. in hunc text.—Vel ejus juſſu, ut videtur, vel aulicorum libidine. En ergo magnatum licentiam, aulicorum gnathonicum ingenium, qui loenociniis gratiam regum captare ſolent.

will be their owne greateſt good and ſatisfaction. In remembrance of the titles of rabbies, maſters, teachers, etc. they muſt alſo remember the interdiction of our Saviour; not to affect theſe honours and offices ambitiouſly; not to be like the Scribes and Phariſees who ſought to gett into the preſbiteriall dignity in pride, and for ſelfe ends. And ſurely to canvas to be choſen a great man, or a ſenator, and that (as is too common) by diſorderly debaucheries or rewards, or for private ends; is moſt diſhonorable to the perſons who are ſo choſen; to the aſſembly into which they have the honor to be admitted; and to the governement of their countrey. They who ſeeke for places are the leaſt worthy of them. They muſt not love ſalutations in the market places, and to be ſeen of men; unleſſe it be to give a ready acceſſe to ſuitors: if they love and practiſe this civility, it will procure them the love of men. And to an engliſh generous ſpirit, nothing is more diſtaſtful than a tedious attendance uppon the leiſure, or humors of great men; and nothing gives them more content than a ready admittance to relate their buiſnes, a patient hearing of them, a quick diſpatch, and a courteous demeanor to them.

The counſell of great men ought to be in the firſt place, to regard what therin will be pleaſing to God, and what not; and to know this, they have no way but themſelves to aſke councell of Him, before they give councell to others, or undertake any great action. Like the ſpyes of Dan, when they ſaid to Jonathan, "aſke councell we pray thee of God, whether our way which we goe ſhall be proſperous [c]." And like the princes of Hezekiah, who counſelled him to reſtore the worſhip of God [d]. Such counſells will be as that which the wiſe king deſcribes; "Ointment and perfume rejoyce the heart; ſo doth the ſweetnes of a man's friend, by hearty counſell [e]". The hebrew

[c] Jud. xviii. 5. [d] 2 Chron. xxx. [e] Pro. xxvii. 9.

note

note is; "Counſell of the ſoule it muſt not be diſſembling, or for private ends, or to pleaſe the appetites of their ſuperiours; butt it muſt be hearty, from the plainnes and integrity of the ſoule, and cleer judgment of reaſon and conſcience. Their delights ought to be in doing good, in relieving the oppreſſed, in helping them to right which ſuffer wrong, in advancing the honor of Chriſt more than their own, in being a terror to evill doers and a prayſe to them that doe well: and theſe delights will accompany them, when this worldly greatnes will be att an end."

They muſt not be great and high in their own conceipts, and carryages. Butt great men muſt be great in piety, great in wiſdome, great in counſell, great in courage, great in experience, great in learning, great in integrity, and great in humility. If they will learne to increaſe their honor, the Holy Ghoſt inſtructs them in divers ſcriptures[f]: "Before honor is humility; and before diſtruction the heart of man is haughty. A man's pride ſhall bring him low; butt honor ſhall uphold the humble." The more honorable a man is, he ought to be the more humble; and the more humble he is, he will be the greater and more honorable. Our Saviour's counſell is ſufficient; "Learne of me; for I am meeke, and lowly in heart, and ye ſhall find reſt unto your ſouls[g]."

[f] Pro. xv. 33, and xviii. 12.—Pſal. xxix. 23.

[g] Mat. xi. 29.

CHAP. XXXII

And nobles.

THE latine word here uſed in the writ is "proceres;" which word ſignifies properly ſtone worke to hold up the ſummer and chiefe beame, or brackett or ſhouldering piece, the principall timber worke in the building: from whence the chiefe men of the citty are called proceres, bicauſe they are eminent in the citty, as thoſe beames are in the building. And ſuch chiefe beames, and ſupports of the royall throne, are and ought to be the nobles of a kingdome [a].

The word proceres is often mett with in the hiſtories, and records of England: as that of king Leyr, who is ſaid, "by the counſell of the proceres of his kingdome, to give his two daughters in marryage." And that king Elidurus ſummoned all the proceres, and princes to counſell. Caſſibelan adviſed with the proceres; ſo did Lucius, and many other of the britiſh kings [b]. So it is related of the ſaxon kings, Egwin, Edred, and Etheldred; and of the daniſh king Cnute, Edward the Confeſſor and others. The ſame word is often uſed in the later hiſtories. And in our records, and writs of ſummons to the parlement the word hath bin conſtantly uſed to this day; "with the magnates and proceres of the kingdome [c]:" and in the ordinary pleadings of our law, the word is of generall uſe and acceptation for the nobles, and ſuch as we call peeres of the realme.

[a] Proceribus.—Capita trabium.—Principes civitatis proceres appellati ſunt, quod ii ita in civitate eminent, ſicut in aedificiis illi. [b] Galfrid. Monumeth.—Conſilio procerum regni, etc.—Math. Weſtm.—Ponticus Verunnius, etc. [c] Cum magnatibus et proceribus regni.

The

The hebrew word [d] for princes is alſo rendred by the latine proceres, and, ſuch as have and exerciſe dominion, as our proceres of England doe. The holy ſtory, ſpeaking of the weight of gould which Solomon had yearly, mentions beſides, that which he had of the merchants and of the kings of Arabia, and of the governors of the countrey; the latine verſion hath it, "of the proceres of the country [e]." So in the advice given to the kings of Syria to take the kings away, and to putt captains in their roomes, the latine ſaith proceres [f]; and where the pſalmiſt ſaith, "the rulers take counſell togither," the latine is "proceres;" and the ſame for rulers and nobles in ſeverall other ſcriptures [g]. The like uſe of the word is frequent by the latine authors: as in that of Virgil; "afterwards other proceres, and meſſengers to the proceres;" and "Servius among the proceres or nobles;" and Juvenal hath the ſame word in this ſence alſo [h].

The French render the word proceres, "the greateſt and the principall men of a towne, the governors [i]." The Italian and Spaniſh have it in the ſame ſence. So the Dutch ſay, "the chiefe and beſt in a ſtate [k]." And generally with us, and in all writers of hiſtories, the word proceres is uſed for the chiefe men, nobles, peeres, captains, governors and ſuch as are in chiefe places and authority; and moſt properly with us, for the members of the lords houſe in parlement, the peers of England.

Proceres is not improperly rendred in Engliſh nobles. And the word noble in our expreſſions, as in other countryes, hath both a

[d] שרים [e] 1 Ki. x. 14, 15.—Proceribus regionis. [f] 1 Ki. xx. 24.
[g] Pſ. ii. 2. and cxxxviii. 1.—Dan. i. 3. and v. 1. 6. 18.—Jonah iii. 8.—Mar. vi. 21.
[h] Æneid. i. 3. Poſt alii proceres. et delectos ad proceres.—Livy. i. ab urb. Servius inter proceres.—Satyr. viii. [i] Les plus grands, et les principaux d'une ville, les gouverneurs. [k] De opperſte oft beſte in een ſtat.

generall, and more ſtrict acceptation. In the generall it is taken for every perſon who is of worth and eminency, of good birth education and parts, virtuous and of à gallant mind and diſpoſition; he is termed a noble perſon, and comprehends in this ſenſe lords and gentlemen; eſpecially ſuch as are diſcended of noble, virtuous and rich parentage and extraction, or created nobles by their prince's favour. Our ſaxon aunceſtors uſed the word athel, which an old writer ſaith is in Engliſh noble[l], and etheling, one diſcended from nobles, by birth noble; ing denoting diſcent or birth. And in the elder times of the Saxons æthel denoted every gentleman, and ſo is to be underſtood in Bede; where he ſaith, "with all the nobles of his nation;" that is turned by king Alfred in the Saxon, "with all the ethelings or nobles of his nation or people." And, in divers other places of Alfred's tranſlation of Bede, nobilis is in like manner turned[m]. And in this ſence, for chiefe men and perſons diſcended of nobles, and counſellors to the king and kingdome, there is often uſe of the word nobiles in Bede, and other authors of thoſe times. After duke William's invaſion the leſſer barons, which were a great number, ſate in parlement as well as the greater barons untill the latter end of king John's reigne; and all were comprehended under the terme of nobles, according to that generall diſtinction, in moſt countryes, of the greater and the leſſer nobility[n].

The Jewes (as learned men conceive) had two words that ſignifyed as homo and vir doe, in their ſtricter ſence, Adam, and Iſh. They called ſuch as were in the ſtate of nobles among them beni iſh, the ſons of great men; and the reſt beni Adam, the ſons of men of common ranke. And ſo is that place in the pſalmes.

[l] Athel anglice nobilis eſt. [m] Æðel.—Hiſt. eccleſ. lib. ii. c. 14. & lib. iii. c. 1. Cum cunctis gentis ſuae nobilibus.—Mid eallum Æðelingum hyr ðeode.—— [n] Tit. hon. Seld. 5. 601. [o] Nobilitas major, et nobilitas minor.

"Hear

" Hear this all ye people, give ear all ye inhabitants of the world, both lowe and high, rich and poore togither [o]." Munſter turnes and explaines it; " as well the ſons of ignoble men as the ſons of nobles, rich and poore togither [p]." The ſeptuagint render it accordingly; " as well nobles as the ſons of men of inferiour ranke [q]." The dutch tranſlation agrees heerwith; and the french tranſlation is expreſſe, " as well men of low eſtate, as nobles [r]."

When Moſes by God's commaund numbred the people, it is ſayd of the heads of the houſes of their fathers; " theſe were the renowned of the congregation, princes of the tribes of their fathers, heads of thouſands in Iſrael [s]:" Paulus Fagius termes them nobiles: and ſuch indeed nobles ſhould be, and able as theſe did to declare their pedigrees. The vulgar Latin renders them; " the moſt noble princes [t]." The ſyriack verſion is " magnates and duces;" the ſamaritan verſion calles them " deputies of the congregation [u]." The arabick verſion is, " chiefe nobles of the tribes of their fathers [w]."

When Moſes remembers to the people what he had ſaid to them; " take ye wiſe men and underſtanding, and known among your tribes, and I will make them rulers over you;" the ſame is expreſſed " nobles [x]." So is the greeke word in the epiſtle to the Corinthians rendred nobles by moſt verſions. But the Æthiopick affords a good

[o] Kimchi in rad. איש Druſ. obſervat. lib. iii. c. 19. אדם, איש—Filii viri בני, איש Filii hominis בני אדם Pſal. xlix. 1, 2. [p] Tam filii hominum ignobilium quam filii cujuſcunque nobilis, ſimul dives et pauper. [q] Οἵτε γενεῖς καὶ οἱ υἱοὶ τῶν ἀνθρώπων. [r] Beide gemeiyne man ende heeren. Tant ceux de bas eſtat que les nobles. [s] Num. i. 16. 18. [t] Nobiliſſimi principes. [u] Deputati à congregatione. [w] Nobiliſſimi tribuum patrum ſuorum. [x] Deut. i. 13.

note, rendring it " not many good :" " for you ſee your calling brethren, how that not many wiſe men after the fleſh, not many mighty, not many noble are called." The Æthiopick (as hath bin ſaid) for noble, is " not many good [y];" the Arabick is, " not many whoſe ſtocke is noble [z];" the Syriack is, " not many borne of a great ſtocke [a]," as noblemen ſhould be; the reſt of the verſions run, " not many nobles."

From the Jewes the Graecians had the ſame expreſſions, by ſeverall words denoting one diſcended from great parentage, a gentleman or nobilis : and ſo for nobilitas, which Ariſtotle calles antient wealth, or virtue and the dignity of the anceſtor, and the like; the firſt authors of it being ſtiled famous, and honorable, and the like [b]. And as the Hebrewes called ſuch nobles, men knowne among your tribes [c]; and from them the Graecians called them, men famous, noted; of the Graecians the Latines had their expreſſion of nobilis, " one worthy to be knowne" and taken notice of for his eminency, greatnes, birth and virtue [d]. Therefore antiently alſo among the Romans, before the monarchy, the title of nobilis was given to none butt him that had " the right of images;" or ſome aunceſtor att leaſt that had borne ſome of their greater offices or their magiſtratus curules, as cenſorſhip, conſulſhip and ſuch like; from whoſe image kept they had the right of images, and were eſteemed nobles [e]. From thence we may have had the uſe of the word noble, as notable, and given to thoſe diſcended of noble parentage. And ſo the French terme ſuch, " puiſſant, powerfull,

[y] Ευγενεῖς. 1 Cor. i. 26.—Non multi. [z] Quorum genus eſt nobile.
[a] Magno ſtemmate natos. [b] Εὐγενής.—Γενναῖος.—Ἐυπαλρίδες.—Ἐυπάτωρ.—Εὐγένεια.—Ἀρχαῖος πλῆτος καὶ ἀρετὴ ἐκ τιμότης προγόνων ἐπίσημοι καὶ τίμιοι.
[c] Deut. i. 13. [d] Nobilis quaſi noſcibilis. [e] Roſin. antiquit. Rom. lib. x. c. 19. Jus imaginum.

the

the grandees, the princes, the nobles, thoſe who are very well knowne [f]." The Italians expreſſe them " powerfull, noble, well knowne [g]." And the Spanyards ſay " noble, and moſt knowne [h]." The Dutch expreſſe it by " well borne [i]; and in an antient ſaxon gloſſary, generoſity is interpreted by " noble birth [k]."

By the academiques or platoniques, and peripatetiques, civill nobility or gentry was ſpecially reckned among externall things that are good; butt more largely it is expreſſed in that quadripartite diviſion of it in the ſchoole of Plato.

" Nobility or gentry is divided into four kinds [l]: ſuch as are borne of good and juſt parents, they call noble; if the parents be men of power or governors, their children alſo they call noble; thoſe alſo we call noble whoſe aunceſtors had honor either from commaund in the warres, or from any of thoſe games wherin crowns were rewards to the victors; and laſtly him alſo they call noble that hath his own inbred dignity, and greatneſſe of ſpirit; of all which, this is the beſt kind of nobility. So that nobilitie hath its ground either from aunceſtors eminent for juſtice, or from ſuch as were powerfull, or from thoſe that had that (other) glory, or from a man's own worth."

The ſum of all is thus expreſt by a latine author; " they are called nobles, and powerfull men, who have great power and authority in them [m]."

[f] Puiſſans, les grands, les princes, nobles, fort cognues. [g] Potenti, nobili, cognoſciunto. [h] Noble, o notable. [i] Wellgeboren. [k] Generoſitas Æðelboɲynneſſe. [l] Διαιρεῖται ἡ εὐγένεια εἰς εἴδη τέτταρα, etc.
[m] Dicuntur nobiliores et potentiores, quorum magna eſt potentia et authoritas.

Butt to come to the more ſtrict and more proper acceptation of the word, as to our preſent purpoſe; by the word nobles among us is ſignifyed the peeres of England, the lords of the parlement. He who is a prince, a duke, a marquis, an earle, a viſcount, a baron and with ſome a banneret is to be ranked in the number of the nobles of England, and properly ſtiled a nobleman, and one of the nobility of England: of whom, in their ſeverall rankes and order, it will be moſt agreeable to my intended purpoſe ſeverally, and diſtinctly to diſcourſe.

The firſt or chiefe of the nobles of England is the king's eldeſt ſon, whoſe title is prince of Wales. And to begin with it higher. In the lawes of Howell Dha, king of Wales, mention is of the heir apparent to the crown whom they called urchrychyad, which is interpreted by etheling or edling, (ſo ſaith Selden[n] is his copy) who is to ſucceed after the king, and is honored before all that are in the court after the king and queen; and is the ſon, or brother of the king. Thoſe words aetheling, atheling, and edling were in uſe with the Saxons for the king's ſon, or him who was next to ſucceede him. As appears in ſome of the ſaxon lawes, and by the old rhyme of Robert of Glouceſter cited by Selden in theſe words

The gode trywemen of the londe wold a abbe y made king,
The kind eir, the young child Edgar Atheling.
Wo ſo were next king by kunde me cluped him atheling.
Thervore me cluped him ſo, vor by kunde he was king [o].

Likewiſe in the times of the Saxons, the ſon of the king was called clito, and clitunculus; as is conceived from the greeke word that

[n] 2 Tit. hon. p. 601. [o] Leg. Athelſtani regis, p. 71. et leg. Canut. c. lv. —MS. in biblioth. Cotton. in rege Harold.

ſignifies

ſignifies illuſtrious: as is to be ſeen in a charter of king Edgar to the Benedictines, where among the ſubſcriptions one is, "I Eadmond clito, lawfull ſon of the ſaid king, have ſigned [p], etc." And in another charter of king Ætheldred to the abbey of St. Albans, is this ſubſcription; "I Æthelſtan ſon of the king, with my brethren clitoes, have conſented." And divers of the like are to be found [q].

After the time of the Normans the word adeling, for the king's ſon, remained in uſe; as appears in that paſſage in Ordericus Vitalis, who mentions "William adeling, whom they eſteeme lawfull heir of the kingdome of England," for the ſon and heir of H. 1 [r].

And this atheling is in another place of the ſame author, for the ſame reaſon, called "William adeling ſon of Henry king of England [s]." And among the lawes of Edward the confeſſor by an old writer is obſerved, that "king Edward kept with him Edgar, and brought him up as his ſon; and bicauſe he purpoſed to make him his heire he called him etheling [t]." So this title, both before and after duke William's time, was in uſe for the king's ſon, and for the heire of the crowne. The title of prince of Wales was tranſferred to the ſons and heirs apparent of England, from thoſe princes of Wales, of North Wales eſpecially, that in the elder times, being

[p] Κλυτὸς. — MS. in biblioth. Cotton. et not. ad Eadmer. p. 159. — Ego Eadmond clito legitimus praefati regis filius, etc. [q] Ego Athelſtan filius regis cum fratribus meis clitonibus conſenſi, etc. [r] Eccleſ. hiſt. lib. xii. p. 869. Gulielmus adelingus quem Anglici regni legitimum haeredem arbitrati ſunt. [s] Fjuſd. hiſt. lib. iv. p. 522. Gulielmus adelinus Henrici regis Anglorum. [t] Rex Edwardus Edgarum ſecum retinuit et pro filio nutrivit. Et quia cogitavit ipſum haeredem facere, nominavit etheling.

Welche,

Welche, held the countrey under the kings of England by the names of princes of Wales, and lords of Snowdon.

Some place the beginning of the title of prince of Wales, in the king's eldeſt ſon, to be 39th H. 3: when Polydore ſaith, "that the king made his ſon Edward prince of Wales, and governor of Aquitaine and of Ireland[u];" from whence it aroſe, that after this time every king, following this precedent, uſed to make his eldeſt ſon prince of Wales. Butt Selden holdes, that there is no warrant from this charter which gives Wales to the prince by the words, "togither with our conqueſt of Wales, Gaſcoigne and Ireland," etc; that therfore the ſpeciall title of prince of Wales, as it belongs to the ſon and heir apparent, began in him[w].

Others place the beginning of this title in Edward ſon of E. 1. uppon his father's ſending for his queen, who was delivered of him at Caernarvon (as hath bin remembred): and this young child, who had no blemiſh in his honor and could ſpeake as good Welch as Engliſh, was accepted for their prince, and ſummoned to parlement by that title[x].

The firſt charter of creation is that of E. 3. to his ſon the black prince; wherin the chief perticulars of the inveſtiture, the crownet and ring of gould, and rodde of ſilver are expreſſed[y]: and this is ſaid to be "according to the uſage[z];" as if, before that time, the princes of Wales had uſed to have ſuch inveſtiture. Since that time

[u] Edwardus regis filius ſit Walliae princeps, ſimulque Aquitaniae ac Hiberniae praefectus, etc. [w] 38 H. 3. Rot. Vaſcon. m. 8. n. 25.—Floril. anº 1254.—Mat. Paris, f. 1187. Una cum conqueſtu noſtro Walliae, etc.—2 Tit. hon. p. 594.

[x] Hiſt. Wales, p. 376. 33 E. 1. Rot. clauſ. m. 12. dorſo. et 7 et 32 E. 1. m. 1.

[y] 27 E. 3. Rot. cartar. m. 27. [z] Juxta morem.

it

it hath bin to almoſt all the ſons, and heirs of the king. H. 4. created his ſon Henry prince of Wales, by conſent of parlement; and the reſt of our kings after him. The laſt, in parlement, was of king James creating his ſon prince Henry[a].

The Hebrewes had their princes of tribes, whom interpreters judge were the firſt borne, in a direct line, from the twelve ſons of Jacob from Judah the firſt borne; and then againe the firſt borne of that firſt borne; and ſo of the reſt[b]. In the empire, from ancient time, the heir apparent or ſucceſſor deſigned hath bin called king of the Romans. It was firſt "prince of the youth[c]; afterwards, "Caeſar," which begun in Ælius Verus; then in the weſterne empire he was called king of Italy, king of Germany, and king of the Romans which continues to this day[d]. And the ſeverall titles of Caeſar, princeps juventutis, and nobiliſſimus given to the heir or deſigned ſucceſſor of the empire, are teſtifyed by inſcriptions of coynes and marbles, and their approved writers.

In the eaſterne empire the title of ſebaſtocrator, that is auguſt imperator; and the title of deſpote, that is as much as lord, ſire or monſieur abſolutely ſpoken, were given to the heir, or deſigned ſucceſſor.

The eldeſt ſons of the kings of France, and of Navarre, are called princes[e]; and of France, by a ſpeciall title, the daulphin, from a guift of the countrey of Daulphenois beſtowed on the crowne with this condition, for the heir to beare this title.

[a] Co. 8 rep. Prince's caſe.—31 H. 6. rot. parl. n. 48.—11 E. 4. rot. cartar. n. 14, 15. et rot. parl. etc.—8 Jac. rot. parl. pt 9. n. 17. [b] Toſtatus Abulenſis, Cornelius à Lapide, etc. [c] Princeps juventutis. [d] Rex Italiae, rex Germaniae, rex Romanorum. [e] Thuanus, lib. xliii. p. 496.

Salazar

Salazar de Mendoza writes, that att the ſame time, when H. 3. made his ſon prince of Wales, the king of Spayne's eldeſt ſon was made prince of Aſturia, uppon the like occaſion of marryage; and this title is continued to the king's eldeſt ſons there [f]. In Sweden the ſons of their antient kings living uppon the ſea coaſts, and ſometimes not abſtaining from pyracies, they called Naas Ranungar and Wijkingar, that is ſea kings; afterwards they called their kings ſons Ijuncters, that is nobles; and in after times they had the titles of dukes, and hereditary princes. And by act of a late rickſdagh, the then comt palatine Charles Guſtave, nephew of the king Guſtavus Adolphus, being declared heir of the crowne, in caſe of the death of the queen then reigning without iſſue; he had therby the title of prince heretier, and of kingly highnes given to him.

Att this day not only the eldeſt ſon, but all other the ſons and children of our king have the title of princes; though other perticular titles as duke of Yorke, duke of Glouceſter and the like, belong alſo to them: butt they are called princes as antiently all the ſons of the king were called clitoes. As in the charter of Edgar formerly cited, the ſecond ſon in his ſubſcription ſaith, "I Eadweard clito begotten of the ſame king:" and in the other of king Etheldred, "I Athelſtan ſon of the king, with my brother clitoes have conſented [g]." The like of the title of etheling is noted by Wm. of Malmeſbury; "that the ſons of the kings of England were commonly called ethelings [h]," not much different from what they are now called, princes.

[f] Orig. de las dignidades de Caſtelle, lib. iii. c. 23. [g] Ego Eadweard eodem rege clito procreatus.—Ego Athelſtan filius regis cum fratribus meis clitonibus conſenſi.
[h] De geſt. reg. lib. i. c. 3.—Filii regum Angliae vocantur ethelingi.

Iſmael

Iſmael is ſaid to begett twelve princes [i]; and this word is frequent for the king's ſeed, and for the chiefe and firſt borne of each tribe. In France all the king's children are termed princes of the bloud; and injoy great priviledges, "and a great regard is had of them [k]."

Generally the children of all kings have, att this day, the title of princes given to them: and the children of ſome of the chiefe princes of Germany, as the electors and ſome others of them, doe now alſo aſſume the title of princes.

The next title in ranke to that of prince is the title of duke, which Milles derives, "duces a ducendo," from leading an army; and hence was the phraſe "to make warre," as the poet doth warrant it.

"In bloudy warres themſelves they doe ingage
Which conſtantly they with the Latins wage [l]."

Another of our heraulds ſaith, "that the title of duke was primitively for the moſt part taken from military imployment; and that in the originall it ſignified nothing butt a generall, or graund chiefetaine [m]." And the great maſter of that as well as of other learning confirmes it, that the dukes were alwayes military [n]. In that ſence our engliſh hiſtorians often mention them: as, "the princes of the kingdome adviſed togither, that Godwin the conſull

[i] Gen. xvii. 20. [k] Haillan. f. 200, 201. On a tousjours faict grand cas des princes du ſang.—The term "princes of the blood," in France, is extended to all thoſe who are deſcended from the reigning branch or family of the kingdom. (M)

[l] Catalogue of honor, p. 22. Duces à ducendo.—Ducere bellum.—Hii bellum aſſidué ducunt cum gente latina. [m] Guillim Diſplay of heraldry, p. 278.

[n] 2 Tit. hon. p. 319.

ſhould be their duke or generall, in military affayres [o]." And that the title of duke was military, his inveſtiture by girding a ſword about him is ſome teſtimony; wherof there will be occaſion to ſay more in another place. This was after the manner of the Hebrewes, in whoſe ſtory we find often mention of ſuch who were governors, and captaines, ſtiled by the name which we tranſlate duke: " as duke Teman, duke Omer, etc. and theſe were the dukes of the ſons of Eſau, etc. dukes of Sihon, etc." and the word there uſed to expreſſe them ſignifyes properly a leader, or captaine [p].

From hence the Graecians had the like uſe of the word; as in the eaſterne empire there was the great duke who was, as our high admirall, a military officer [q].

From thence alſo in the ſame ſence it was uſed in the old empire, where the lieutenants or preſidents of provinces or frontiers, under the generaliſſimo, were called dukes. As " the duke of Britany, the duke of Syria, etc [r]. who were military officers." And the titles of dukes and counts, and dutchy and countey, were ſynonimous; only the office of dukes was alwayes military: as " the duke of the Britaines" had 14000 foot, and 900 horſe, under his commaund [s]. Some would deduce this title of duke from the old Germans hertzzogen, ſo they call their dukes: butt our author ſaith, that the Romans ſeldome received, butt gave lawes and cuſtomes to other nations. The originall of the german word hertzog, for duke, is derived from their deſcription of a chiefe ruler or maſter of the expe-

[o] Conſilium inierunt principes, quod Godwinus conſul dux eis eſſet in re militari.
[p] Gen. xxxvi.—1 Chron. i.—Exod. xv.—Joſ. xiii. [q] Μεγας δυξ.
[r] Magiſtri praeſentales militum. Novel. 27. de com. Iſauriae, Britanniae dux, dux Syriae, etc. [s] Novel. xxiv. c. 6. Dux Britaniarum,

dition

dition in a military buiſnes; and the more probable to be taken from the Romans [t]. And in their's, and the gothique times, the name of dux was diſperſed in the territories of Spayn, and uſed there from the 650 year of our Lord; and denoted one that had military forces with his governement.

In Poland the title of vaiuod is the ſame with duke, and denotes a captain or governor of the militia: and in Bohemia they had their dukes of the like nature and imployment [u].

The like may be noted of Scotland, Sweden, Denmarke and other countryes who have the title of duke in the ſame ſignification. It is agreed by moſt authors, that the name of dux had two notions; one ſignified an abſolute ſupremacy, and not differing in nature from the ſupreame title of a king; the other notion of it was, as it hath bin, honorary, officiall, or feudall under a ſuperiour.

Of the firſt ſort of ſoveraigne dukes there have bin many in England: that title was given to Brute the firſt ſoveraigne, whom our ſtories mention heere by the title of "famous duke or captaine [w];" and we reade of the duke of Cornwall who came with him, and was ſoveraign in his territory. And in the time of Caſſibelan, of the duke of Troynovant, that is London, and of his ſoveraignty there; and of Æſclipiodorus duke of Cornwall, with his Britons fighting againſt the Romans to regaine their liberty; and, of Coel duke of Colcheſter, who afterwards tooke the title of king, whoſe daughter Helena was mother to the great Conſtantine.

[t] Ein heer dees zugs. Praefectus vel magiſter expeditionis.—(Virdux. M)

[u] Regn. Bohem. vol. edit. à Frebor. 1602.—Chron. aut. reg. p. 28. [w] Galfr. Mon. Inclitus dux.

Hengiſt, who was ſufficiently a ſoveraigne, and came in to the conqueſt of this nation, is termed "the firſt conſull and duke of the engliſh nation, who was of Germany [x]." The Northumberland dukes began in Otha brother to Hengiſt; and although they were ſoveraigns there, yett they continued in that title almoſt 100 years, and would not take the title of king untill afterwards [y].

This title, as a ſoveraign duke (and ſo he fully was) is given to Moſes, who is termed the famous duke, captain or leader of the Jewes; and another ſaith, that he was great emperor or commaunder of the Hebrewes [z]. Joſhua, who was a ſoveraigne prince, is ſtiled captain or leader of the Hebrewes [a]. The judges alſo and their kings are ſtiled leaders of the people; and the hebrew word is tranſlated duke, prince, leader or ruler. And in this ſence is uſed by the prophet where he ſayes of our Saviour; "Behold, I have given him for a wittnes to the people, a leader and commaunder to the people." And the rabbins ſay, that every duke or dukedome, is a kingdome without a crowne [b].

The Graecians held no great difference, when Philip of Macedon (as Juſtin relates) "would not be called king, butt duke of the Graecians [c]." In the ſtories of the more barbarous times it is taken for ſuch as were not crowned for kings, yett acknowledged no ſuperior; and Martiall ſpeaking of Domitian ſaith,

[x] Ethelwerd. lib. iii. c. 2. et lib. iv. c. 2. Primus conſul et dux qui de Germania fuerat gentis Anglorum. [y] Galfrid. Monumeth. lib. ii. c. 11.—Ponticus Virunnius, lib. ii. hiſt. Brit.—Mat. Weſtm. p. 27, 28. [z] Gothofred. in fine. Inclytum Judaeorum ducem.—Magnus Hebraeorum imperator. [a] Hebraeorum ducem. [b] נגיד ἀρχοντα. Ducem, principem, Iſa. lv. 4.—כל אלוף. מלכתא דלאתגא Col aluph malcutha de la thega. [c] Nec regem ſe Graecis ſed ducem appellari juſſit.

"In

" In many things, Domitian, of thine,
The image of a ſupreame duke doth ſhine [d]."

They have in Germany, and other countreys, the name of archduke, as the archduke of Auſtria; and there was the archduke of Saxony, and an archduke of Lorrein, who were ſoveraignes in their territories. Although this ſuper-eminent title, of itſelfe, gives not ſo much of ſoveraignty, without authority of force to mainteine it; as a leſſer and lower title backed with power and dependancyes, which doe both create, continue and make effectuall all titles whatſoever.

Therfore the title of the duke of Ruſſia, who is alſo written great duke, though it may ſound with ſome leſſe than archduke, yett is knowne not to be inferiour to it in ſoveraignty; and he makes no ſcruple to write himſelfe emperour. Neither will any deny the ſoveraignty of the great duke of Florence, and of the king of Poland in Lituania, who writes himſelfe duke therof [e]. They have in Germany the dukes of Baviere, of Saxony, of Pruſſia, of Holſtein, of Pomerland, of Mecklenburgh, of Curland, of Brunſwick, of Lunnenbergh, and others free princes of the empire; who although they have a dependance uppon the emperor, and acknowledge a ſupremacy in him, yett are they alſo ſoveraigns within their owne territoryes.

Such likewiſe were in France, heertofore, the dukes of Normandie, Brittaine, Aquitaine, etc. and divers other territoriall ſoveraignties were there; butt all att length, by eſcheats, or otherwiſe, were reduced " to the ranke of ſimple lords [f]."

[d] Plurima quae ſummi fulget imago ducis. [e] Wielkie kſiaſe. [f] Aux rangs des ſimples ſeigneurs.

The

The other notion, of duke not being a ſoveraigne, is as it hath bin honorary, officiall or feudall under a ſuperior; ſuch were thoſe military officers, called dukes, ſerving under ſome prince, or ſtate whom they acknowledge to be their maſters: and their originall is held to have come from the northerne nations. And moſt authors agree concerning this title of duke, both as ſoveraigne and as ſubordinate, and that in moſt kingdomes they who held the ſecond place, next unto the kings and their ſons, are, according to the forme of the emperor's army formerly, now called dukes as a ranke of nobility and great men [g].

We reade in all times of ſubordinate dukes in this nation; as when the brittiſh king Bladud having three daughters he, by the counſel of his nobles of his kingdome, gave two of his daughters in maryage to the dukes of Cornwell and Albanie. And in divers of the britiſh kings reignes ſuch dukes are mentioned [h].

After the arrivall of the Saxons heere, we find mention of duke Eldot, a Britain, who tooke Hengiſt priſoner. In the time of king Arthur the dukes were aſſembled, with the nobles, in publique councells. Butt the title of duke became more frequent in the time of the Saxons, as is noted by the hiſtorians and authors of thoſe times [i]; and a duke was then taken for a great man or magiſtrate. And in Latine the names of "duke, conſul, comes, prince, ruler, ſub-ruler," etc [k]. are confounded togither; and in our idiome earle, alderman, hertzogen for the ſame with duke [l]. Ingulphus ſetts

[g] 2 Tit. hon. Seld.—Spelman. gloſſar.—Cambd. Britan.—2 Tit. hon. Seld.—Sir Rog. Owen MS. [h] Ponticus Virunnius, lib. ii. hiſt. Brit.—Galfr. Mon. lib. ii. c. 11.—Mat. Weſtm. p. 27, 28. [i] Spelman. gloſſar. hoc verbo, et Bede: Aſſer. Menevenſ.—Ethelwerdus. [k] Dux, conſul, comes, princeps, regulus, ſubregulus. [l] Chart. Wigorn. eccleſ. Huntingt. Florent. Wigor. Mat. Weſtm. etc.

downe the charter of king Edgar to the abbey of Croyland atteſted, after the biſhops abbotts and abbeſſes, thus: "I Orgar duke have appointed; I Ailwin duke have confirmed," etc. And many more of this nature are in the charters of thoſe times [m]; wherby, and in divers paſſages of our hiſtories and records, it appears, that thoſe whom they called dukes were of "the chiefe of their nobles, and members of their publiqve councells [n]. After the time of the norman invaſion king W. 1. having himſelfe only the title of duke of Normandy, neither he nor his ſucceſſors would beſtow the honor of that name on any of their ſubjects; untill the time of E. 3. who in the 11th year of his reigne did, in parlement, create his eldeſt ſon being then earle of Cheſter, into the title of duke of Cornwall. And in the 36th year of his reigne he made his ſon Henry duke of Lancaſter, and his ſon Lionel, duke of Clarence: he created alſo the dukes of Glouceſter and of Yorke; and his graundchilde created the dukes of Hereford, of Surrey, Exeſter, Aumerle and Norfolke [o]. And as att the firſt the title of duke was military and officiary, heere as in other nations, and the ſame with earle; yett afterwards it became more diſtinct, and meerly honorary and hereditary: according to that of Sir Henry Spelman, ſpeaking of the creation of dukes by E. 3. he ſaith, that afterwards many peeres excelling in nobility, territories and abundance of riches, did aſcend to this high pitch of honor, rayſed therunto by the king's charters. And to them nevertheles (ſaith our author) "Nothing of magiſtracy, nothing of territory, nothing of office or juriſdiction was conferred [p]." And it is

[m] Ego Orgarus dux conſtitui.—Ego Ailwinus dux conſtabilivi.—An[s] 694, 725, 747, 797, 816, 874, 970, 975, 998. [n] Duces et proceres in conſilium.

[o] Milles Catalogue of honor. Guillim. Cambden. Brit. Seld. 2 Tit. hon. Spelman, etc.—25 E. 3. rot. parl. n. 18. 38 E. 3. rot. parl. n. 36, 25.—21 R. 2. parl. m. 14. n. 23, 35. [p] Gloſſar. hoc verbo.—Faſtigium hoc aſcendunt regiis evecti codicillis.—Nihil magiſtratus, nihil territorii, nihil muneris vel juriſdictionis confertur.

certain,

certain, for matter of territory, if one be created duke of Norfolke or of any other place, this gives nothing to him of land, or of juriſdiction in that countey. Butt our learned author ſpeakes not of their right to be members of parlement [q], which is the higheſt magiſtracy and juriſdiction, and is conteined in the very charters of the creation of dukes and other nobles, and eſſential to their peerage. Coke affirmes, that every duke being of full age ought to have a writ of ſummons directed to him, to come as a peer of England to the parlement [r]: and in all the rolles of ſummons, as high as their firſt creation by E. 3. downwards, they are inſerted. Alſo every ſon of a duke is by the courteſy of England called a lord, butt hath therby no place or vote in parlement, unles he be called therunto by a perticular writ of ſummons; and then alſo he muſt be contented, in the parlement, to take his place and precedence as a baron, and according to his creation; though out of parlement he hath another precedence, as the ſon of a duke.

The generall of David's army, Joab, our tranſlation calles chiefe and captain; the vulgar Latin, the greeke and Syriack verſions are ducem. So Abner whom wee tranſlate captain of the hoſt, the vulgar Latin calles leader of the militia of Iſrael, the Syriack ſayes generall of the army of Iſrael; and Amaſa captain of the hoſt of Judah, is alſo called by thoſe verſions leader, and generall of the forces of Judah; and the like is in ſundry other places [s].

In Germany the title of duke was alſo military, and by reaſon of this, and other titles, given to every ſon of him that had his province or dukedome: there are ſome dukes who have neither territory nor

[q] Jus comitiorum. [r] 4 Inſtit. c. i. p. 1. [s] 1 Chron. xi. 6.—1 Kings ii. 32. Ducem militiae. Ducem exercitûs.

juriſdiction,

juriſdiction, butt the name and title only: that of duke hath bin much propagated ſince the french empire. It is uſually the next degree of nobles under the king; and in Italy the Lombards choſe the title dux before that of comes, for the higheſt under the king, and ſo in ſome parts of France, and Germany: and ſome dukes had counts under them, although they were alſo ſubordinate themſelves, as appears in that old lawe; "if the perſon who hath committed the fact be ſo powerfull a man, that the count cannot diſtraine him; then lett him acquaint his duke with it, that he may diſtraine according to law [t]." Which ſhowes that the duke was ſubordinate and officiary.

In the time of Otho the great the feuds annexed to dukes became hereditary, diſcending (as now with us) to the iſſue male: and under Conrade 2. this was extended to the graundchildren of him that was firſt inveſted with the dignity; and ſince, as well to females as to males.

In Italy the title of a ſubordinate duke is as antient as the year 570. And in France the princes of the bloud [u], who are the principall of their nobles, have moſt of them the title of duke, as the duke of Anjou, the duke of Orleans, the duke of Alencon, etc. and there are alſo other dukes, as of Bullion, of Montmorency, of Rohan, of Longueville, of Buefort, and many others. One of their authors acknowledgeth, that they had the name of duke from the Romans, and from thence began to make uſe of it for the governor of a province [w]: that afterwards dukes became words of principalities,

[t] Leg. Bavar. c. v. art. 8.—Si talis homo potens hoc fecerit, quem ille comes diſtringere non poteſt; tunc dicet duci ſuo, et dux illi diſtringat ſecundem legem.

[u] Princes du ſang. [w] Paſquier Recherches, p. 107. Les Francois apprindrent des Romains à uſer de ce nom de duc.

and they would have rayſed themſelves unto a kingly power; butt were reduced under the king of France, and the dutchyes became feudall, and the dukes ſubjects to France in the firſt ranke of nobles.

Scotland hath the ſame title and ranke of dukes as England hath. And of Sweden it is ſayd, that the name and originall of duke is military [x], and anſwears to their native word of heertog, or hirtug, from an army or military expedition whoſe commaunder he was: att length for eſtimation of virtue and remuneration, they became ſuch by right of inheritance, and were created of the order of the nobles [y].

For the ſolemne inveſtiture of dukes, they were girded with the ſword of the dutchy, as John of Moreton, afterwards our king John, was, and crowned duke of Normandy [z]. So was the duke of Britaine inveſted, who had his ducall robe of cloth of gould, and the antient habit was a purple coate furred with ermins, and a robe of eſtate uppon it of the ſame, with the ſword, crownet or chaplet [a]. The creation of the duke of Cornwall was only by girding him with the ſword, not by a ring, a rod, and a coronet [b]. In that of 9 R. 2. is mentioned the girding of the ſword, the cap and golden circlet, the delivery of the patent by the king, and the duke's being removed to a higher ſeate in parlement [c]. Some dukes were inveſted without either coronet or ſword; only putting on a ducall cap, giving a rod of gould into their hands, and with delivery of the charter of creation. So was John duke of Lancaſter

[x] Loccennius de antiquit. Sued. p. 48. Ducum nomen et ortum ex militia eſſe, etc.
[y] Ex ordine nobilium creabantur. [z] Hoveden, p[t] ii. p. 792. [a] Hiſt. de Bret. lib. xiii. c. 71. [b] 25 E. 3. rot. parl. p[t] i. m. 18. [c] 9 R. 2. rot. parl. n. 14, 15. m. 5.

inveſted

inveſted duke of Aquitaine, by aſſent of the parlement of England [d]. Sometimes the charter was read in parlement, and homage done to the king by the new duke: and that inveſtiture by the ſword only is in other creations, and the clauſe of ſupport or creation money inſerted in the patents [e].

In Scotland the title of duke begun under Malcolme 2 [f], then promiſcuouſly uſed with comes; butt the firſt remembrance of it in their records, is 11 Rob. 3. when dukes were created in their parlement [g]. And this king created his ſon David duke of Rothſay, and his brother Robert duke of Albany. And the inveſtiture or creation of a duke there (when with ceremony) is by the king's putting on the belt and ſworde, the cap and the coronet, giving him a golden verge, and then the charter patent of creation. And the ducall robes are alſo putt on him, with enſignes and ſtandards.

The antient ſoveraign dukes of France were inveſted by a ſolemne impoſition of a rich crowne or coronet on them, without annointing; and the duke was to have four countyes, or four baronies for every countey: butt there is no proofe of the perticular number of the countyes [h].

For the ceremonies of inveſtiture of a duke by delivering of banners to him, and by kiſſing the pomell of a ſword held by the emperor; alſo by charter in the empire; and by a ducall cap and ſcepter in Italy, with the formes therin uſed by the pope; and of their crimſon velvet robes, cappes, coronets and other ceremonies,

[d] 13 R. 2. rot. parl. m. 9. n. 21. [e] 21 R. 2. rot. parl. m. 14.
[f] An° 1020. [g] Spelman, Selden, Hollingſhed, etc. [h] La Sallade, f. 67.—L'Oiſeau, c. v.

they are att large ſett downe by Selden [i], to whoſe learning I acknowledge myſelfe a great debtor.

To theſe nobles, rayſed to this eminency of degree and honor, ſome caution may not be improper. They muſt not be ſuch as the prophet complains of; "Oh! my people, they which leade thee, cauſe thee to erre, and diſtroy the way of thy pathes." And againe, "The leaders of the people cauſe them to erre [k]:" the conſequence wherof is in the ſame verſe; "They that are ledde of them are diſtroyed." Like unto that which our Saviour notes of the phariſees, "They be blind leaders of the blind [l]:" and when dukes and nobles are blind leaders, Chriſt telles us the iſſue of it, "both ſhall fall into the ditch;" like thoſe violent men, who the wiſe man ſaith, "Doe leade their neighbour in the way that is not goode [m]." This ſentence is paſſed againſt both: "He that leadeth into captivity ſhall goe into captivity [n]."

Theſe dukes and other nobles (this caution may ſerve for all of them) ought to be ſuch leaders as wiſdome ſets out herſelfe to be; "I leade in the way of righteouſnes, in the middeſt of the pathes of judgement." And the benefit of ſuch leaders is declared, "That I may cauſe thoſe that love me to inherit ſubſtance, and I will fill their treaſures [o]." This leader wiſdome, that is Chriſt, is moſt worthy to be followed, to be our duke and captain; and the wages which he gives his ſoldiers and followers, is the inheritance of ſubſtance in manſions not made with hands: her pay is treaſure which cannot be corrupted or ſtollen. Lett all nobles ſtrive to be ſuch leaders, and all men to follow them, and our chiefe leader Chriſt Jeſus, whom

[i] 2 Tit. hon. Selden, p. 338. [k] Iſa. iii. 12.—Iſa. ix. 16. [l] Mat. xv. 14. [m] Prov. xvi. 29. [n] Revel. xiii. 10. [o] Prov. viii. 20. —Prov. viii, 21.

God

God hath given for a wittnes to the people, a leader and a commaunder to them [p].

The next degree of nobles is that of marquis. The word mark or marche denotes a limit, bound or frontier in the antient and later dutch, and rather in the language of thoſe nations that overran the moſt part of Chriſtendome under the names of Gothes, Vandals and ſuch more. We ſay in England the marches, in relation to Scotland and Wales. The Graecians have the word in the ſame ſence [q]. The Latin hath the word marcha for a frontier, and commarchani for bordering neighbours, and margus uſed for Normandy, being the ſouth march of France: ſo the ſpaniſh marche, the britiſh marche [r] for confine. The Germans uſe for it marken. The Italians have the word marcheſe. The French ſay marchiſer to border or adjoyne to, and the Spanyards ſay a citty with its ſkirts or limits [s]. And thus the word from thoſe northerne nations hath ſpred itſelfe into the reſt of Europe.

In England the word marchio or marqueſſe was uſed ſometimes both for earles and barons, eſpecially thoſe that were lords marchers or lords of frontiers, whence is the true originall of it. And afterwards (as duke) it became a ſpeciall dignity placed next beneath that of duke, and immediate above that of earle, as it is att this day.

We reade of Brianus ſon of the earle, marqueſſe of Wallingford, and of the lords marchers of Wales. "I wiſh that the wives and mothers of our marqueſſes would do ſoe on all occaſions, to keepe

[p] Iſa. lv. 4. [q] Μαρχέσι & μαρχεσίνη. [r] Marca hiſpanica. Marca britannica. [s] La cividad o ſus commarchas.

their

their countrey ſafe, and to remove the ſtaine of ſhame [t]." And att the coronation of queen Elianor, wife to H. 3. the lords marchers of Wales claimed to carry the canopy, in the right of marchers. So Mortimer, and others are called marqueſſes; and the lord Nevill of Raby is declared marqueſſe, in a pattent, in the beginning of R. 2. as one of the wardens of the ſcotch marches [u]. Butt under this king the title of marqueſſe (as it is a diſtinct title of honor) did begin. He created Robert de Vere, earle of Oxford, marquiſſe of Dublin in Ireland for life; butt it was in him an engliſh dignity, and by reaſon of it he was placed between the dukes and earles in parlement. Of this Walſingham writes, "that in this parlement a new dignity was created, unuſuall with the Engliſh, the marqueſſe of Dublin [w];" the reſt of the earles taking it amiſſe, bicauſe they ſaw him in a higher degree than themſelves, and chiefly for that he was not more powerfull in wiſdome or armes than others. In his patent is no clauſe of inveſtiture; butt in the parlement rolle the chancellor declares the reaſon and merit of the creation [x], and there is mention of the girding him with a ſworde, putting a circle of gold uppon his head, the delivery of the charter to him by the king and his taking place between the dukes and earles. In the ſame king's reigne is a patent cancelled, by which John earle of Somerſet is created marqueſſe of Dorſett [y]. And mention of a golden circlett putt uppon his head, with 35 markes a year for creation money. Another followes of the ſame date [z], by which he is made marqueſſe of Somerſet, and men-

[t] Wm. Malm. hiſt. novel. lib. ii.—Jo. Sariſb. de nugis curial. lib. vi. c. 16. Utinam ſic faciant uxores et matres noſtrorum marchionum. [u] Lib. rubr. ſcaccar. Floril. an° 1264, 1284. marchiones Walliae. marchiſii, marchiones.—1 R. 2. Rot. pat. p[t] i. m. 13. [w] Creata eſt in hoc parliamento nova dignitas Anglicis inſueta, marchio Dubliniae. [x] 9 R. 2. Rot. chart. m. 13.—9 R. 2. rot. parl. m. 3. n. 17. [y] 21 R. 2. rot. chart. m. 14. n. 23. [z] M. 12. n. 18.

tion

tion of girding him with a ſword, and putting a crownet on him [a]. Butt the dignity of marqueſſe being taken from him, and the commons (in the ſucceeding reign) recommending his merit to the king and lords, and that he might be reſtored to the name and honor of marqueſſe; the earle kneeling prayed the king moſt humbly, that in regard the name of marqueſſe was a ſtrange name in this kingdome, that he by no means would give him this name of marqueſſe; for by the king's leave, he would never beare, nor take uppon him any ſuch name in any manner: nevertheles the earle heartily thanked the lords and commons for their good will heerin [b].

The patents of creation of a marqueſſe in following times have not been alwayes alike: that to marquis Dorſet by E. 4 [c]. mentions the girding of a ſword, and the cap of honor; the crownett being omitted, though perhappes uſed in the inveſtiture. The patent now uſed is the ſame with that of an earle, the word marchio being in the place of comes, and the annuity or creation money being 40 markes.

The greeke word for a marqueſſe hath bin remembred, and the german word markgraves, which literally denotes frontier earles or dukes [d]. The word marchio occurres not in the empire till Charles the great; and in his time and after is often mention of marchiones for frontier governors. That the emperor H. 1. taking in Brandenburgh placed a governor there, and called him marchio [e]. And att this day is the title of marqueſſe of Brandenburgh; ſo is there the

[a] 21 R. 2. rot. parl. m. 9. [b] 4 H. 4. rot. parl. m. 18. art. 18.—Come le noun de marquis feuſt eſtrange noun en ceſt roialme. [c] 15 E. 4. rot. chart. m. 13. [d] Comites limitanei, duces limitanei. [e] Aimoinus de geſt. Franc. lib. v. c. 2. —Chron. Sitau. lib. i. c. 8, etc.—Cantzius Wandal. lib. iii. c. 16.

marqueſſe of Baden, and others. The creation and inveſtiture of marqueſſes hath bin as of dukes and counts in the empire. In Naples they have the title of marqueſſe, and in the like ſignification as before [f].

In France a marqueſſe hath place betwixt a duke and count (as with us) and is of much later beginning than the feudall uſe of duke and count. About the year 900 ſome great dukes and counts, if their territories were frontiers, affected it in their ſtiles. Richard duke of Normandy is ſtiled marqueſſe of Normandy, and Baldwin, marqueſſe of Flanders [g]. In the later ages marqueſſes have bin created in France, as other dignities, by the king's letters patents only. The ſieur d'Aramont was by H. 2. created marqueſſe of the iſles d'Or en Provence, and was to keepe garryſons on the frontiers [h]. So the baron of Montmorency was created marqueſſe of Thury, the country a marquiſate, and divers priviledges graunted to him. Att this day there be many in that kingdome called by that title.

In Spayne there was ſome like uſe of this title, and that from the frontiers; as the marques de las Eſpannas, the marques de Tortoſa and others. H. 2. king of Caſtile and Leon made Alphonſo count of Denia marqueſſe of the city of Villena, the marches of four kingdoms [i]. The next was the marqueſſe of Sintillana, in the frontiers of Spayne. Of later times it became there more frequent, as in other kingdomes. They may ſett a crownet on their armes, deſcribed to be a circle with rich ſtones on it [k].

[f] Neapol. illuſtr. lib. i. c. 23. §. 1. 7. [g] An° 991. Malmeſb. de geſt. reg. Angl. lib. ii. c. 10. Marchuntius. Et Ferreol. Locrius in Chron. Belg. p. 182.

[h] Choppinus de domanio, lib. i. tit. 5. §. 9. Chez du Cheſne dans les preuves de la lin. 4. de l'hiſt. de Mont. p. 238. [i] Salazar de Mendoza. Origin. de las dignidades, lib. iii. c. 13. Id. St. Garibay in H. 2. An° 1366. [k] Garibay in H. 2. Un cerco guarnecido de piedras.

In

In Scotland the title of marqueſſe began under king Ja. 6. who made John, ſon to James duke of Caſtle Herauld, marqueſſe of Hamilton. In Poland marqueſſes are alſo reckoned among their titles.

The next degree of nobles to that of marques is the antient and honorable title of earle. Which name ſome derive from the Danes who changed the name alderman, into eorla and erle. Butt Spelman and Selden [l] ſhew ſome difference between them. The daniſh word ear, and ar, ſignifies honour, and earle, the ſame as alderman, and as grave with the Germans. Verſtegan brings it from the ſaxon word ear which alſo ſignifies honour, and ethel or el which is noble; ſo ear-el is honorably noble. Loccennius mentions the ſcandian or gotique word jarl, and jerl, ſignifying the ſame with the german grave, and latin comes [m]. Some would have the word earle the ſame with elder, and eolderman, of which titles ſomewhat is ſaid before. The word eorl is uſed by our ſaxon aunceſtors for a prime man of the nobles, as Etherwerd the ſaxon writes of eleaven conſuls whom the Danes call eorls; and Æthelſtan diſtinguiſheth the eorl and the alderman, as archbiſhop and biſhop, in their wergild. Att this day the Danes in directions of their letters ſay, to the honorable and noble man [n].

In the ſaxon annales before the year 1000 after Chriſt, mention is made of Sidroc the elder eorl, and Sidroc the younger eorl, Oſbern eorl, and Frona eorl, and Harold eorl, in the year 870 [o].

[l] Spelman. gloſſar. hoc verbo.—Tit. of honor, verbo Earle, p. 315. [m] Antiquit. Sueo—Goth. p. 49. [n] Lib. iv. c. 3. Undecim conſules quos illi (Dani) eorlas ſolent nominare.—Spelman. gloſſar. verbo Eorla.—Erlig och wellbirdig mandt.
[o] Sibpoc eopl alba, Sibpoc eopl pe zpongz, ⁊ Orbepn eopl, ⁊ Fpeona eopl, ⁊ Hapold eopl.

And the latine tranſlations doe render them comites. And the word earl is uſed in the ſaxon annals of king Etheldred's time, a little before Canutus; butt then it began to be generally taken for men of like dignity with ealdermen, which then was layd downe as to the higher titles, and eorl taken inſtead of it. And in the ſaxon fragment, of the dignities of the later times of their monarchy, earles and thanes are ſpoken of, butt not ealdermen. And the name of earle was in that age of ſuch dignity, that W. 1. in his ſaxon ſtile calles himſelfe earle of Normandy, which the Latine tranſlates prince of Normandy [p].

In our latin authors of the more antient, and later ſtories of our nation, and in our law proceedings, the word earle is conſtantly rendred comes; butt in our Engliſh, to this day, we ſay earle. Our antient author Horne ſaith in the French of that time, that the king hath companions to hear and determine att parlements, etc. Theſe companions are now called countees, after the latine comites, and the countryes are called countyes [q]. Another of our antient authors, Bracton, is to the ſame effect, that the king hath in his court comites and barones; "they are called earles or comites, as it were companions of the king [r]." The king alſo ſtileth them, in matters of record, his couſens; not bicauſe antiently they were all of the bloud royall (as it is ſayd in the earle of Rutland's caſe) butt uppon a late cuſtom taken up about 300 years ſince, and continued to this day. In the brittiſh language jarleth is an earldome, jarleſſe a counteſſe, and jarle ſignifies an earle, a companion, a friend; and ſo are earles unto their

[p] Lamb. peramb. Kent. p. 500. Chart. abba de Dury.—Willelm Engla kyng 7 eorle oper Normanbie. [q] Mirroir des juſtices, c. 1. §. 2. Le roy uſt compaignions pur oyer et terminer aux parliaments: ceux compaignions ſont ore appellés countees apres le latin comites. [r] F. 34. Quia comites dicuntur quaſi ſocii regis.—MS. Sir Rog. Owen, p. 321.

princes.

princes [s]. It is noted, that this honorary title of the prince's friend [t], or friend to the king, was ſo frequent in the eaſterne parts, that we may with reaſon enough believe that it was thence derived into the roman ſtate, and from them into other parts of the world. In the kingdome of the Jewes we ſee it in that of Huſhai the Archite, who among the dignities of the court is ſingularly mentioned the king's companion [u]: And the hebrew word properly ſignifyes a friend or a companion. So the Latine and Greeke reade it the king's chiefe friend, and the king's chiefe companion [w]. In this place of the Chronicles, our tranſlation calles Huſhai David's companion; and in Samuel, calles him David's friend. The like are thoſe whome Lyſias choſe to lead an army into the land of Juda, called mighty men, of the king's friends [x].

The paſſage in Eſdras is a good precedent for this cuſtome, and for the beſtowing of this title: he who was the wiſeſt among the guard, that kept the king's body, the neereſt to his perſon, that moſt advanced trueth, him the king held moſt fitt to be advanced to that honor; and ſayes to him, "Bicauſe thou art found wiſeſt, thou ſhalt ſit next me, and ſhalt be called my couſin [y]." "So Ariſtotle (ſaith Laertius) lived with Amintas king of Macedon, as his companion and friend [z]." So from that uſe it ſeemes, the phraſe of the friend of God, to expreſſe a ſingular honor, had through great favour with God came to be uſed, as Abraham is called the friend of God; and our Saviour ſaith to his diſciples, "Ye are my friends." Among the princes of Solomon is reckoned Zabud, a principall officer, and the king's friend [a]. The Graecians had the word deſcribing

[s] MS. Sir Rog. Owen, p. 326. [t] Amicus principis. Amendem[ts] p. 931.
[u] 1 Chron. xxvii. 33. [w] רע המלך Πρῶτος φίλος τῦ βασιλέως, et ὁ ἀρχι—εταῖρος τῦ βασιλέως. Comes. [x] 2 Sam. xv. 37.—1 Mac. iii. 38, 39.
[y] 1 Eſd. iv. 42.—1 Eſd. iii. 4.—1 Eſd. iv. 35.—V. 42. [z] Γατρῦ κὴ φίλε.
[a] Ja. ii. 23.—2 Chron. xx. 7.—Iſ. xli. 8.—Jo. xv. 14.—1 Ki. iv. 5.

ſuch a perſon; as in the acts of the councell of Chalcedon, ſaies Dioſcorus, "Are ye ſeditious? Lett the counts come:" and the counts came in [b].

The roman emperors antiently had about them, beſide their greateſt officers of ſtate, ſelect attendants of court, knowne by the name of comites, companions and friends, who waited and aſſiſted the emperour in his councells and actions; which is the proper duety of an engliſh earle, to his king [c].

Of comtes in Fraunce their ingenious author ſaith, that they were the invention of the Romans; that they were judges, and willing to ſupport their grandeur, as if every one of them had bin taken out of the traine and company of the emperors [d].

In England, as elſewhere, there are ſeverall kinds of earles: the firſt and chiefeſt are called earls palatin, who were in a ſort ſuperiour in their territories; for to have the title of earle, or the ſeiſin of a countey or earldome, and royall power in all things under the king was to be an earle palatin [e]. The primary deduction of the name palatin, as it hath relation to a countey, was received heer doubtles, out of the uſe of the empire and Fraunce; where palatins are ſuch counts as have, in their title, a ſpeciall eminence in their dignity from a relation (as their name denotes) to the emperor's court or pallace [f]. The title was twofold, either originally feudall and

[b] Act. i. p. 118. edit. Bin. 1618, tom. ii. p[t] 1. Δός τὺς κόμητας, εἰσῆλθον οἱ κόμηται.
[c] Comites et amici. Apud Gruter. p. 1100. 5. [d] Paſquier Recherches, p. 41. Eſtoit invention romaine, p. 110.—Comme s' il euſt eſté tiré de la ſuit et compagnie des empereurs. [e] Bracton de corona. lib. iii. c. 3. §. 4. Regalem poteſtatem in omnibus. [f] 2 Tit. hon. Seld. p. 639.—Pfaltzgraves des heiligen romiſchen reicks, hoffegraven, comites palatini or palantini.

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annext to the name of ſome territory, with ſuch rights of empire and majeſty as other ordinary princes have not (as in the counts palatin of the Rhine); or meerly perſonall, without the addition of any perticular territory proper to him that hath the dignity: of both which ſorts, are divers teſtimonies in writers on this ſubject.

The curopalates were ſuch counts as theſe, of whome Nicetas ſaith to Michael, who was afterwards emperor, that he had the chiefeſt honor among thoſe of the houſhold, for he was curopalates [g]: and ſome learned men ſuppoſe, that from the cura palatii, or curopalates in the roman empire, and the very name of comes palatii alſo then uſed, the originall and nature of the title of a feudall count palatin is to be deduced.

The moſt eminent to whom this title is attributed, in England, is the earle of Cheſter, which earldome W. 1. gave to Gherbod a Flemming; and he being detained priſoner in Flanders, W. 1. gave it to Hugh Lupus, or de Auranches; and this was as free by the ſword, as the king held all England by the crown [h]. Theſe earls had their courts of criminall and civill juſtice, and their barons as their great councell. An old monke expreſſeth it thus.

By the ſword of dignity to hold it with might,
And to call a parlement to his will and ſight,
To order his ſubjects after true juſtice,
As a praepotent prince and ſtatutes to deviſe [i].

And to this day the countey palatin of Cheſter, it being alwayes preſerved in the crowne when there is no prince of Wales, and given

[g] In vit. Ignat. patriarch. Conſtant. init.—Τὰ πρώτα τῶν ἐν τῷ παλατίῳ τιμωμένων, κυροπαλατης γαρ ἦν. —Camb. Brit. p. 464.

[h] Ordericus Vital. hiſt. eccleſ. lib. iv. p. 522. an° 1070.

[i] In vit. ſanctae Werburg. Bradſ. c. xvi.

to

to the prince of Wales when he is created, hath had chamberleins who ſupply the place of chancellor, juſtices (where my honored father was chiefe juſtice), a baron of the exchequer, ſherifs and other officers proportionable to thoſe of the crowne. Butt in ſummons he is not named palatinus; butt having ſuch a regall juriſdiction as counts palatin in forein countreyes had, the ſame name was given him heer, and began about the time of H. 2.

Uppon like reaſon, as thoſe of Cheſter, were the antient earles of Pembroke, and the biſhops of Durham counts palatin[k]. The dutchy of Lancaſter is alſo called a countey palatin, E. 3. having graunted Henry the firſt duke all liberties belonging to a countey palatin[l], which John of Gaunt likewiſe injoyed; and theſe liberties were annext to it by act of parlement in the beginning of H. 4. and continue though in the hands of the king. Uppon like reaſon was the name of countey palatin fixed on the biſhoprick of Ely, and on Hexam-ſhire, which was under queen Elizabeth united to Northumberland[m].

By the ſame reaſon, and liberties, was Hugh Beleſme earle of Shrewſbury under W. 2. in ſome records of E. 1. called a palatin. And from the ſame reaſon perhappes did John earle of Warren and Surrey, under E. 3. ſtile himſelfe comes palatii[n]. Neither is the title of palatin expreſſed in any of the patents of ſuch creation, till that of E. 3. to Lawrence lord Haſtings, made therby earle palatin of Pembroke[o]; the which was alſo by right of bloud in him.

[k] Placit. parl. 18 E. 1. f. 11. and 19 E. 1. f. 25. [l] 25 E. 3. rot. parl. pt i. m. 18. Plowden's Comment. f. 215. [m] El. c. xii. 3 H. 8. c. ii. [n] Placita coron. in hundred. de Stoteſden in com. Salop. 20 E. 1.—20 E. 3. [o] 13 E. 3. rot. pat. m. 12.

Of earls palatin in the empire, ſomwhat hath bin ſaid; in Germany that of the prince elector palatin, whom they ſtile pſaltzgrave of the Rhine, is moſt conſonant to the title: and both he and the other princes of ſeverall titles of the Upper Germany, and the antient earles of provinces in the Netherlands, had and have their jura regalia within their territories, and are not differing from the nature of earls palatin.

Not much different from theſe were the antient earles of Champagne in Fraunce, who had ſeaven earles under him as his ſubjects, and wrote themſelves comtes palatin: butt that was (ſaith Paſquier [p]) uppon a revolt of the earle Theobald to the emperor, who made him a comte palatin, and he wrote himſelfe of Champaigne and Brie comte palatin; which continued till the devolution of the countey to the crown. Philip duke of Burgoyne ſtiles himſelfe palatin de Burgoyne. Perot alſo, palatin de Bearne, is mentioned by Froiſſart. The title of conde palatino is likewiſe noted to have bin in Spayne, as Gonzalo de Guſman was ſo called almoſt 200 years paſt [q].

In Poland, Littow, Moldavia and thoſe parts, the title of vaiuod is uſually tranſlated palatinus; and in their language more perticularly named ſlaui: and of theſe palatins of the ſenatorian ranke are reckoned in Poland to be 32 [r].

Butt it will be time to come to the more generall title of earle or comes: the which in England, as in other countryes was antiently taken for the like with duke in power, dignity and government;

[p] Paſquier Recherches, p. 93. a.—p. 95. [q] Du Cheſne en les preuves du liv. 1. l'hiſt. de Chaſtillon, p. 2, 14, etc.—Fauin theatr. d'honneur, p. 944.—Vol. iii. c. 6.—Alonſo Lopez de Haro Nobil. lib. iv. p. 273. [r] MS. mihi dat. ab ablegat. Polon. an°.

and

and was officiary, and afterwards became honorary; and is the moſt antient title, and very honorable, conſtantly uſed, and ſtill continued amongſt us. Thus it is held to have begunne with the Normans, and that W. 1. created Alan earle of Brittain, into the earldome of Richmond [s]. Some mention is in Ingulphus, and others, of the creation of earles before H. 1: and in his time he created his naturall ſon Robert earle of Glouceſter, to pleaſe Mobile daughter and heire of Fitzhaman lord of Glouceſter, whom the king woed for his ſon; and ſhe told the king plainly, in the language of that time by a rhimer whom they called Robert of Glouceſter,

Sir hes ſede, wel ichot that your hert ope me is
More vor mine heritage then vor my ſulſe iwis;

and that ſhe would never marry a man without a name. Wherupon the king made his ſon earle of Glouceſter, and he marryed this heire.

In the time of Maud the empreſſe (wherof charters are ſtill extant) ſhe created Geffrey of Mandevile earle of Eſſex, and Miles earle of Hereford, and Aubrey de Vere earle of Oxford [t]. King Steven made many earles by his charters, and gave away much of the crowne-lands to them; which H. 2. reſumed, and depoſed certaine imaginary and falſe earles made by king Steven, who had waſted the crown lands by giving them to thoſe earles [u]. Aubrey de Vere was by H. 2. created earle of Oxford, and Hugh Bigot earle of Norfolke (or att leaſt confirmed him in that title) and William earle of

[s] Cambd. Brit. f. 591. 3 W. 1. [t] In theſaur. Cotton.—Cambd. ord. Angl. p. 120.—Gerald. itin. Cambr. lib. i. c. 2.—Cambd. Brit. p. 393.

[u] Depoſuit quoſdam imaginarios et pſeudo-comites.—MS. abbat. Waverley.

Arundell [w]. Many charters of creation are alſo extant, in the times of k. John, H. 3. and the reignes of the ſubſequent kings, in our records unto this day; wherby the antiquity, conſtant uſe and eminency of this title is ſufficiently teſtifyed. Nor was it otherwiſe in the empire, and in other kingdomes of Europe. The emperors had under them their comites of the firſt, ſecond and third ranke, as is obvious in divers authors, and in the exemplars and ſeverall formes of their creation, and inſcriptions in divers monuments [x].

In Fraunce alſo they had their greater comtes, and leſſer comtes. In more auntient time this of comte was held a title promiſcuous with that of duke; butt afterwards became inferiour to it, and an honorary title only. And there are divers formes of charters, of the french kings, of the creation of them, ſome very antient; and the title was of conſtant continuance and eminency as with us.

The like of the condes of Spaine. And the like title and name of comites is found in Naples, in Poland, Bohemia, Hungary and in the northerne countryes. Germany, England, Sweden, Denmarke give their own names to them, as graves, earles, jaerls, jerls etc. Butt the other nations, from the roman dialect of comites, call them comtes, condes, conties and the like; which cauſeth a beliefe, that the Romans gave the precedent of this dignity and title to other nations: and ſome hold, that the Romans had the nature of them and the firſt uſe of them (both of dux and eſpecially of comes) from the Germans, by imitation of what was obſerved among them, after the Romans were accuſtomed to their manners. It appears in Tacitus, that divers princes in Germany had their governement of

[w] Chart. antiq. 5. n. 13. [x] Juſtin. lib. xii.—Theodoſ. lib. vi.—Euſeb. de vita Conſtantin. lib. iv. c. 1.—Caſſiodore in praefat. ad lib. vi. Variarum.

ſeverall territories aſſigned them, and held their courts in them; and "had every one att leaſt 100 comites or followers that were counſellors and aſſiſtants to them:" and the honor of every of them was according to the multitude and courage of theſe comites [y]. Indeed the title appears not with the Romans to have bin honorary, or officiary, untill after the Germans were knowne to them. Butt (ſaith Selden [z]) I find not the Romans to have bin ſuch imitators of forein nations; they gave lawes and cuſtomes, butt rarely tooke any: and the conjecture may pleaſe, butt (ſaith he) I cannot aſſent to it. It had bin equally probable if not more, to draw it from the Gaules; for "among them every great man had, according to his worth, his like followers whom they called ambacti and clients," as Caeſar tells us [a]. And the ſame in ſubſtance Tacitus ſpeakes of the Germans; and it is likely that ambacts and comites were the ſame. And in old Dutch ambachte is tranſlated comitatus; as "in Engelbrechtes ambachte," in Engelbert's countey [b]. Butt I may be cenſured for having ſpent too much time already, on this perticular; the honor and antiquity of the title will aſke my pardon.

The next degree of nobles to an earle is the title of viſcount; which word is the ſame that ſignifies our ſheriffe, turned into a dignity, and vice comes is he whome the king appoints "to performe the duety of the earle [c]:" butt in the ſence of one of the nobles, he is of the degree next to earles, and above barons. Cambden ſaith of them, "after earles viſcounts doe follow in order; an antient appellation of office, butt a new appellation of dignity not heard of by us untill the time of H. 6. who in parlement created John lord

[y] Centeni ſingulis ex plebe comites, conſilium ſimul et autoritas, adſunt, etc.

[z] 2 Tit. hon. p. 331. [a] Caeſar de bello gal. lib. vii. Eorum ut quiſquis eſt genere copiiſque ampliſſimus, ita plurimos circa ſe ambactos clienteſque habet.

[b] In Engelberti comitatu. [c] Supplere vicem comitis.

Beaumont viſcount Beaumont: and five years after this he had other letters patents (before any other viſcount made in England) of a more expreſſe deſignation of the place or precedence belonging to his dignity." The title hath bin ſince given to many, wherof the later examples are in the time of king Charles 2 [d].

Caſſaneus ſaith, that this dignity of a viſcount is of great antiquity in other realmes; butt Sir Roger Owen will not admit this, unleſſe vice comes be taken for a deputed officer, and in the nature of our ſherifs [e].

It was uſually in France given to a baron, or banneret, or other great gentleman that had three or four baronies, on every of which ten gentlemen att the leaſt were depending [f]. The beginning of this dignity was from ſuch as, being att firſt by delegation made vice comites under the great dukes or counts of the elder ages, revolting from their immediate ſuperiours, and acknowledging the king only, retained yett their former name and dignity of viſcounts alwayes. Such a one is the viſcount of Turenne: butt there are few of this kind. With ſome of them alſo continued the civill juriſdiction in their citties and diviſions, being the moyenne juſtice as in the cuſtomes of Amiens, Montreuill and other parts therabouts; and is alſo ſtiled "viſcountell juſtice," of the right of viſcount [g]. And in Flanders and Picardy ſome lords, that have this kind of juriſdiction, are called therfore "lord vicomtiers [h]." Some have alſo gained criminall juriſdiction. Others have no juriſdiction, butt receive in ſatisfaction

[d] Britan. Ord. Angl.—18 H. 6. rot. pat. p[t] ii. m. 21.—23 H. 6. rot. pat. p[t] ii. m. 20.—2 Car. 2. rot. pat. p[t] v. n. 12 & 14. [e] De gloria mundi, p[t] iv. conſ. 55.—MS. p[t] ii. f. 339. [f] La ſallade. [g] Juſtice vicomtiere, Droit de vicomte. [h] Seigneurs vicomtiers.

for it the third part of the profits ariſing out of the exerciſe of the king's juſtice in their territories; as the vicomties of Bourges, Cologne, Villemenart etc. A ſecond ſort of viſcounts are ſuch as hold of the king, as of ſome countey or dutchy united to the crowne; of which the moſt are. And the third ſort is of thoſe which held of counties not in the king's hand; and their being thus mediate, or immediate to the crowne, leſſens or increaſes their dignity. Our king H. 6. as king of France, gave the vicecomtie of Beaumont to John whom he had before created viſcount Beaumont. This title alſo of viſcounts or vizcondos, in ſome number, occurs in the dignities of Spayne, and from the ſame originall as in France [i].

In Italy, Germany and the northerne countryes, we find not this perticular title of dignity of viſcount. Butt the Romans had their deputies of the counts, which might ſometimes beare the name of vicecomes [k].

Our hiſtorian Ingulphus hath the worde vice dominus, and our ſherifs are ſometimes antiently called vice domini; butt in France it is become a title of dignity. And as viſcounts had their originall from being ſubordinate to the great dukes or counts of France; ſo the vidames, from being ſo to biſhops [l]: and where the vidame reſided or had his fiefe, after ſuch time as ſuch poſſeſſion or territory as he had became to be ſettled in him either by guift or permiſſion, as a fiefe, his denomination was from the biſhopricke only; as the vidames of Rhemes, Amiens, Chartres, Mans etc.

The laſt in ranke, though not in time, of the degrees of nobles is that of baron, an antient and honourable dignity with us, and in

[i] Alonſo Lopez de Haro, Nobil. gen. lib. iv. p. 273. [k] Vicarii comitum.
[l] 5 Greg. tit. 9, epiſt. 66. et diſtinct. lxxxix. c. 2. — Synod. Remenſ. 1. can. 24. a.

other

other countryes. The originall ſignification of the word baron, which none can precede, is for a man. So it is ſayd ſometimes with us the king and his barons, for the king and his men; the like occurres, in the Lumbard lawes, our barons for the king's men [m]. Selden holds cleerly the derivation of this name baron from bar, barne or berne [n]; as in ſome of the northerne languages, which diſperſt themſelves into Europe uppon the incurſions of the Gothes and Vandales, it ſignified a man, and in that ſence it denotes the ſex as vir doth: Philoxenus interprets it ſo; and the french and latin gloſſaries [o]; and the Picart french, as our law french, have baron and femme for the ſame with man and wife; and in the lawes both of the Salians, Alemans and Ripuarians, baro or barus and foemina occurre for a man and woman [p]. And all or the moſt part of the tounges of Europe had ſomething from thoſe northerne languages: and in this perticular we ſee the word baron almoſt in every ſtate in Europe. I paſſe by that derivation of baron out of Perſeus, Cicero, and Hirtius, for a ſtupid or blockiſh fellow, and the ſervant of a ſoldier; it being impertinent to my purpoſe. Butt after the ſignifications of it for a man, and for a huſband, I come to the next which is for a ſon: ſo the hebrew word bar is a ſon [q], the dutch worde bar is the ſame; and our northerne people and the Scots call children all of them barnes, as the ſaxon word berne is for children, and beren to bring forth [r]. The French alſo, in divers provinces, doe call the eldeſt ſon of the lord of the towne a baron. We have an engliſh ſaying, a bold baron. And Iſidore notes barones from a greeke name ſignifying valiant in labours [s]; and the ſame is in an old ara-

[m] Longobard. lib. i. tit. 13. Leg. unio. Barones noſtri. [n] 2 Tit. hon. p. 428. [o] Baro, ἀνηρ, ber, baro, vir. [p] Tit. 33. de via lacina. tit. 76 et 95. tit. 58. §. 12. [q] בר [r] Bæpn pro ſobole. bæpen parere.
[s] Orig. lib. ix. c. De civibus. Barones graeco nomine, quod ſint fortes in laboribus.

bick

bick latin gloſſary. [t]And our Bracton hath his derivation of baro as it were robur belli, the ſtrength of warre[t]; and the ortus vocab. calles baro a noble and ſtout bold man, as vir among the Latins from vi, force and ſtrength. And bargines, with Iſidore, ſignifies valiant, ſtout in war; as with the Spanyards baragan is for a ſtrong bold man, and baragana for the like woman. So are the greeke words baros, etc. for ſoldiers. And the emperor's guards were called barones; and their company was called barangia[u], as the ſtate of the barons with us is called baronagium, and barnagium. Spelman thinkes thoſe were Engliſh, and ſuch as were then bill-men. And in the ſaxon grammer, bari or barri are acknowledged to be principal ſoldiers[w].

We reade alſo of the word baron applyed to thoſe under earles and peeres, barons of barons; as of the earle of Cheſter, of the abbot of Ramſey, etc[x]. So the earles in Germany, France and Italy, had their barons holding of them, and the earls of Flanders had the ſame[y]. We find alſo with us the barons of countyes, that is free-holders, barons of the cinque ports, barons of London, of Yorke, Cheſter, Warwick, Feverſham and other places, wherof there will be occaſion to diſcourſe perticularly heerafter; as alſo of the leſſer barons and lords of mannours, att this day their courts being called "courts barons[z]." Butt I leave them for another argument. To come neerer to our purpoſe, Cicero in ſome places makes uſe of the word baro for an eminent perſon; "as with the patron, and the reſt of the barons[a]." And Inſulanus ſaith, that the word "baron ſignifies emi-

[t] Lib. i. c. 8. Barones id eſt robur belli.
[u] Βαρὸς, μπαρος.—Βαραγγια.—
[w] Veſtib. lib. viii. Daniae hiſt.
[x] Spelman. gloſſar. hoc verbo Baron.
[y] Aimoinus, lib. v. c. 11.
[z] Curia baronis.
[a] Ad Attic. lib. v. Apud patronem et reliquos barones.

nency,

nency, and a certaine greatenes of power [b]," agreeable with the acceptation of the word baron as a nobleman. And as in the dutch and ſcandian tounge baron ſignified a man, and barinotoug ſignifies an expedition of men; ſo it was afterwards applyed unto the more eminent men: " ſuch as were of principall eſtimation and nobility, are ſaluted barons." And from thence, in the lawes of Norwey, baron, or barun is rendred in the daniſh verſion herremund, and in ſwediſh att this day hermun, one who is diſcended of an illuſtrious family; and in the ſcandian tounge ſuch a one was called herſe [c]. He who by gallant actions approved himſelfe a man was, in thoſe countryes, honored with the title of baron, which alſo in the gothique language ſignifies a famous man, as is noted by Beſoldus: " and he who for his gallant actions, was adorned by the king with a peculiar immunity and dignity, for honor's ſake, was ſaluted a free lord or baron [d]." And in France the word ber, from whence they fetch the word baron and berun, is uſed to ſignify a noble, ſtout, brave, or more literally a manly lord, a good character of a true baron [e].

Some, eſpecially learned engliſh antiquaries hold, that the name baron came into England with the Normans, or att leaſt with Edward the confeſſor, who had drunke in the norman ayre and manners [f]. Butt Sir Roger Owen doth not ſubſcribe to this opinion, butt allowes the name place heere in the Saxons time [g], as in a charter of one of

[b] Barones eminentiam et majorem aliquam poteſtatem ſignificare. [c] Leg. ripuar. tit. lviii. §. 12.—Leg. Norveg. c. lvii. & xlviii. Landzlete balkn. —Viros eminentiores conſpectiores, exiſtimationis ac nobilitatis praecipuae, barones ſalutati ſunt.—MS. c. v. Qui ex illuſtri familia natus.—Chron. Norveg. p. 151. [d] Beſoldus, c. iv. §. 16. Peculiari immunitate et dignitate a rege ornatus, honoris cauſa, liber dominus ſeu baro ſalutabatur. [e] Noble ber & puiſſant meſſire Henry de Vergie du Chezne, lib. iv. de l'hiſt. de la maiſon de Vergy, p. 240. [f] Spelman. gloſſar. verbo Baro.—Seld. 2 Tit. hon. p. 688. [g] MS. Sir Rog. Owen, p. 349.

the

the kings of Mercia, he frees the church of Peterburgh from the exactions of his earles, barons and ſherifs. And by the priviledges of the cinque ports it appears they were called barons in the confeſſor's time, in whoſe edicts there is direct mention of barons. In the MS. of Ely, before the conqueſt, to a ſale of lands very many barons are witneſſes. And in domeſday the word barones is often mentioned. As to the expreſſion of barones in Cnute's lawes, in Henry Huntingdon of Edward the elder's time, and in the booke of Ramſey, the uſe of it is by ſome held rather to be by the fancy of the writer in Latin afterwards, than as a knowne name of the Saxons time who called thoſe thaines, as they did in Scotland, who were afterwards with us and them called barons.

In the feuds the name of baron is not found, butt great valuaſors, captains and proceres [h]. In Bohemia as antient as the emperor H. 4. barons were created [i]. In France they are likewiſe very antient. With us none denyes them place from the time of W. 1. and that the name of baron ſucceeded that of king's thaine [k]: and from that time, to our preſent age, the name of baron hath bin a title and degree of honor and nobility of the engliſh nation. Theſe were called the greater barons, and were by a threefold right: 1. By tenure, 2. By writ, 3. By patent; of all which there will be occaſion to ſpeake perticularly in other places. The chiefe of the fathers and heads of families among the Hebrewes, eſpecially ſuch as they called iſh, the ſons of great men (as hath bin noted) have ſome reſemblance [l].

In the german empire thoſe whom they name by the title of herren, etc. are by them tranſlated in Latin barones. Butt in Low Dutch the word baron is ſometimes uſed, and perticularly in the

[h] Caſſiblancus. proem. ad rubric. de Baron. §. v.

[i] Æn. Sylvius de ſtat. Bohem. c. xxii.

[k] Cynninger Dane.

[l] Filii nobilis. אישׁ

ſubſcriptions

ſubſcriptions of the decrees of their councells, "by the aſſent or authority of the graves and barons[m]."

The Graecians, as hath bin noted, have the word baron and barony; expreſſing beta by μπ, as is uſuall with them[n]. In Italy they have the word baron for a dignity of nobility[o]. In Naples it is among their titolati, and is comprehenſive of the ſeverall rankes of their nobility. The French have the title of barons, ranked after viſcounts and vidames, and before chaſtellaines.

The Spanyards have the word varon, for one that is notable and famous: and Gregorio Lopez makes their dignity of ricos hombres the ſame with barons[p]. And in Catalauna and Valencia thoſe are called barons, who poſſeſſe the inheritance of ſeignories with large juriſdiction.

The title banneret hath ſometimes in our records bin taken for the dignity of a temporall lord in parlement; as in the caſe of Gominez, bannerets are reckoned among the parlementary lords. And in the ſtatute which commaunds the appearance of members of parlements, baronets are reckoned before the knights of the ſhire; and ſo in ſome of our hiſtorians, ſuppoſed to be miſtaken or miſwritten for bannerets; and ſundry authorities are in our bookes of law, proving bannerets to have voice in parlement as lords[q].

The german banner-heer, for lord ſtandard-bearer, is the like as with us banneret. In Fraunce they had alſo the title banrent, and

[m] Freyen, Freyherren, Edlenherren, Herren, Edlen.—Baron zu Liesfelt, etc.—Pourmeiſtr. dict. Loſ. §. 35. Von der graven und herrn wegen. [n] Μπαρῶν.—Μπαρωνία. [o] 2 Tit. hon. Seld. p. 427. [p] Ad lib. x. tit. 25. De los vaſſalos, partic. 4. [q] 1 R. 2. rot. parl. m. 6.—Stat. 2. 5 R. 2. c. iv.—Walſingham, p. 359.—12 E. 3. f. 78. tit. Challenge 119.—5 R. 2. rot. clauſ. dorſ. m. 32.

banneret, next of degree if not equall to a baron. I read not of this title elſewhere, nor is that of marqueſſe or viſcount in the northerne countryes; butt in Sweden the title of baron is next to earle, and of the like quality and dignity as with us in England. Likewiſe in Denmarke, Poland and thoſe parts, they uſe the word baron for a title of their nobility.

In the lawes of Hungary barones are mentioned for the great men and peers of the kingdome: and in Bohemia they have the word barones, among their chiefe nobility[r]. Butt ſome perhappes, of a more levelling temper, will cenſure me to have ſpent already too much time in titles.

[r] Stephen Werbeucz. p[t] i. tit. 2.—An[o] 1348. edit. a Frebero.

CHAP.

CHAP. XXXIII

Of our ſaid kingdome.

THE great men and peeres of this kingdome, the nobles of England, have bin before in part the ſubjects of this treatiſe. I ſhall heere ſpeake ſomwhat of them in a more reſtrictive ſence and application to this kingdome, as they are great men and nobles heere, whom we commonly call the peeres of England [a], and lords of the parlement; generall appellations more peculiar with us, eſpecially that of lords, than in other kingdomes.

The occurrence of this title of peeres, with reference to the lords of parlement, is frequent both in our ſtories and lawes; and the right of peerage is thence mentioned in the rolles of parlement [b]. And as dukes, marqueſſes, earles, viſcounts and barons are peeres, and by that name ſpecially knowne [c]; in like ſorte knights, eſquires, gentlemen and yeomen (being freemen and denizens) of all ſorts, in our lawe, are as of the ſame ranke for the title of paritie, the true Engliſh wherof is equality: peeres are equalls. In the great charter where no freeman is to be impriſoned, diſſeiſed, outlawed, baniſhed or otherwiſe made ſubject to any judgement, "unleſſe by the lawfull judgement of his peeres," etc [d]. that hath bin alwayes interpreted, that what lay baron ſoever be arraigned for a capitall crime, he ſhall be tryed by barons; and under that name are included all above barons; butt he ſhall not be tryed in thoſe caſes

[a] Pares regni. [b] Math. Paris, an° 1208, p. 357.—Magn. chart. c. xiv.—15 E. 3. c. ii.—11 R. 2. rot. pat. p^t i. m. 2. art. 34.—P. 3. E. 3. coram rege. rot. 9.—22 E. 3. f. 9. [c] 1 Tit. hon. Seld. p. 344. [d] Niſi per legale judicium parium ſuorum.

by any of leſſe nobility, they not being his peeres. Butt any inferiour man, in like criminall cauſes, hath his triall indifferently by knights, eſquires, gentlemen or yeomen, which in law are taken for his peeres. So in the arraignment of Sir Nicholas Throckmorton, under queen Mary, uppon the words of the ſtatute of E. 3. of treaſon "be attainted by men of their condition;" gentlemen, eſquires and yeomen were held men of his condition, though he were a knight [a].

The reaſon of that double parity in England, that all barons and dignities above them are peers of the realme, and all others under them are peeres alſo among themſelves, is imagined to proceed from the feudall cuſtomes "of peeres of the court, of the houſe of the pallace [f]." All ſorts of men in the kingdome have their peeres, only the king "hath no peer in his kingdome [g]," being the head of all; ſo it is ſayd of God, who is like unto thee? The vulgar Latin is, "who is thy peere [h]?" Yett the kingly prophet complaines of one of his peeres: butt it was thou, a man "mine equal, my guide," etc [i]. Some princes have ſo farre honored ſome of their ſubjects, that they have made them their peeres, and given to them the title of father, patres and patricii, from whence ſome would derive the word peeres. As when Joſeph came into his deſerved favour with the king of Ægipt, and he made him to ride in the ſecond chariot which he had, and they cryed before him, bow the knee [k]: the word there abrech is interpreted father of the tender king, or tender father of the king. So Haman was called, by the king, his father [l]. The

[a] Holinſhed.—25 E. 3. Soit atteint per gentes de leur condition. [f] Pares curtis, domûs palatii. [g] Bracton. Parem non habet in regno ſuo.
[h] Pſal. lxxi. 19. Quis par tibi? [i] Pſal. lv. 13. Par meus, dux meus.
[k] Gen. xli. 43. [l] אברך Chaldee of Onkelos, & Jonathan. Hieroſolim. Targum. Eſth.

guift

guiſt "of the high patrician honour" was by Zeno the emperor preferred before all other; and in the guiſt of it to Importunus Theodorique, it is called the office of full dignity. Juſtinian ſayes of them, they are honoured by us in the place of a father; when a patricius is called "father of the ſtate [m]," as all true peeres ought to be. And of this ſort ſome hold to have bin the perſian companions to the king in honor [n].

Such were "the twelve peeres of France [o]," and the comites and amici of the emperours. Theſe peeres of France are by a ſpeciall honor of ſtate ſo called, and were antiently ſixe clercs and ſixe laics, all dukes and earles; afterwards ſome of them devolving to the crown, other pairies were erected, and the number of them not certaine. Their originall inſtitution from our britiſh king Arthur, or from Charles the great, is refuted by Du Haillan, and more probably fetched from their king Lewis the younger [p]. And although all the nobility of France, as with us, are in a generall ſence comprehended under the name of peeres, yett theſe kind of peeres, ſuch as the douze pairs were, are honorary, and in dignity above the reſt of the nobles of France; yett they have alſo the word pairs in uſe for perſons of a meaner and equall condition, and probably deduced from the ſame originall as with us. Wheruppon Du Haillan notes, that the fiefs becomming hereditary and patrimoniall, according to the uſage of Lombardy, in each of them were eſtabliſhed a certain number of vaſſalls called peers, or freemen [q] of the fee or court, charged to hold att ſett dayes the court of the lord, with him to

[m] C. de Coſſ. lib. iii. & c. de Decur. lib. lxvi. Sublimis patriciatus honor.—Caſſiodor. Var. iii. ep. 5.—Authent. lxxxi. in praef. Πατὴρ τῆ Κοινῆ. [n] Zenoph. Cyropaed. ii. Ὁμότιμοι. [o] Les douze compagnons. [p] De l'eſtat. des affaires de France, p. 225, 226.—An° 1179. [q] P. 225, 6.—Pairs ou francs hommes.

judge

judge feudall cauſes and others there depending, to be preſent att new inveſtitures; and by reaſon therof, had great praerogative and nobility. And thoſe vaſſalls judges were called peers, bicauſe they had equall juriſdiction.

The judges of our exchequer in England are called barons, and probably were ſo really; and they and the king's juſtices, when the great charter was graunted, were held for peeres to the other nobles. Wheruppon is that of Bracton, "earles and barons are not to be amerced butt by their peers, and this by the barons of the exchequer, or before the king himſelfe:" that is in the king's bench, where the earle of Northumberland was amerced by the judges as his peeres[r]. Butt the proper knowne ſence of the peers of England, or peers of the realme att this day, is the lords of parlement; and therefore the lords houſe in parlement is called the houſe of peers.

Another appellation, peculiar to the nobles of this kingdome, is the title of lord, or my lord: a word of our owne idiome, yett not altogether improbable to have bin fetched from the northerne countryes. In Gothland they have an officer of juſtice, for governement of the people, whom they call lagevard, and laverd, and loverd according to their ſeverall pronunciations. Lage in their language, as in the old Saxon, ſignifies lawe; and ſo we find it in our antient ſtories, where they ſpeake of danelega the lawe of the Danes, merchenlage the law of Mercia, weſt ſaxon lage, and the like; and vard and verd in their language is the ſame as with us ward or guard: ſo lagevard, laverd, and loverd ſignifies with them one who is a warden, keeper or judge of the lawe.

[r] 19 E. 4. f. 9. — 38 E. 3. f. 31. — 21 E. 4. f. 77. — Br. amerciament. 47. — 1 H. 6. f. 7.

The

The ſame word loverd, expreſſing ſuch a one as we now call lord, is found in divers of our antient writers, as Bede hath it[s]. And it is in that metricall tranſlation of the firſt pſalme, fairely written about the time of E. 2. tranſcribed out of the whole pſalter, a like wherof is in Bodley's library in Oxford; and the character of it ſeemes to be about that time of E. 2. it beginns thus,

Heely beerne that nought is gan
In the red of wicked man,
And in ſtrete of ſinful noght he ſtode;
. . . . . of ſcorne ungode:
Butt in the lagh of loverd his will be ai,
And his lagh thinke he night and day, etc[t].

Heere both the words, lagh for lawe and loverd for lord, are cleerly expreſſed: and the pſalme concludes thus.

For loverd of right wiſe not the way,
And gate of wick forworth ſal ay[u].

The like tranſlation pertinent to this purpoſe is in the fifteenth pſalme, which in the old rithme runns thus.

[s] Hiſt. Angl. p. 25.

Of him comðe gode Bruȝhe
Ðat par ðe purȝte man
Ðat louep par in Engelonð,
Arc ich eu telle kan.

[t] Pſal. i. 1, 2. Bleſſed is the man that walketh not in the counſell of the ungodly, nor ſtandeth in the way of ſinners, nor ſitteth in the ſeate of the ſcornfull. Butt his delight is in the law of the Lord, and in that law doth he meditate day and night. [u] For the Lord knoweth the way of the righteous; and the way of the ungodly ſhall periſh.

Louerd who in thy teld who ſal wun,
In thy heli hille or who reſt mun?
He that incomes wemles,
And ever wirkes right wiſenes*.

The like expreſſions are found in the old engliſh rithmes by Robert of Glouceſter, where he ſetts forth the diſcourſe between Maud daughter and heir to Fitzhaimon, and king H. 1. touching her marryage with his baſe ſon Robert afterwards earle of Glouceſter. The maide ſayes to the king.

So vair eritage as iche abbe, it were me great ſhame
Vor to abbe an louerd, butt he adde an to name.

Then ſhe tells the king her father's name; and ſhe deſired no huſband unleſſe he had two names, which the baſe ſon of the king had not. The king then told her that his ſon's name ſhould be Fitz-Roy, which the maid ſaid was a fayre name; butt aſked the king what the name of Robert's ſon ſhould be? to which he replyed,

The king underſtode, that the maid ne ſede no outrage,
And that Glouceſter was chiefe of ire heritage.
Damaiſele, he ſede, tho' thy louerd ſſal have a name,
Vor him and vor his heirs, vair without blame.

And told her, that Robert ſhould be earle of Glouceſter, which liked her; and it concludes,

* Lord who ſhall abide in thy tabernacle, who ſhall dwell in thy hill? He that walketh uprightly, and worketh righteouſneſs.

This

This was endleve hundred yer; and in the ninth yer, right
After that, or louerd was in his moder a hight.

I have mentioned theſe perticulars the rather for the pleaſantnes of the ſtory; and to manifeſt the frequent old uſe of the word louerd for the ſame as we att this day expreſſe by the word lord, eaſily by pronunciation contracted from louerd into lord. And the northerne originall of it may appear by what is before noted, and by the uſe of the word lourd little different from louerd, among the Danes, for one in power and commaund, as is noted by Lambard [x]. In the reigns of Cnute, Harold, and Hardi Cnute, ſuch was the infamous oppreſſion, ſlavery and thraldome of the engliſh nation, that every Dane was for feare called lourdane; and it became (after their expulſion) a name of deſpight and reproache for their ſakes, lourd and Dane being made one word. Butt the name lord by itſelfe alwayes ſignifyed a perſon of power and honor, and one of our engliſh nobles.

Verſtegan would have the word lord to come from the ſaxon word laford [y], which for ſome aſpiration in the pronouncing they wrote hlaford; which is not much diſſonant from lagevord, and loverd, and by contraction, receiving like abridgement as other our antient appellations, is in one ſyllable become lord. The etimology he bringeth from hlaf which ſignifies bread, though att this day we call the faſhion of making it only a loafe: and ſo hlaford was one that did afford or give bread to others, that kept good hoſpitality, and relieved the poore, an excellent property of a lord; and he notes, that ſuch as were wealthy were chiefly renowned, eſpecially in theſe northerne regions, for their good houſekeeping.

[x] Perambulation of Kent, f. 111, 112. [y] Hlaford.

Selden is not ſatisfyed with this derivation of Verſtegan; butt fetcheth the word lord from lars, or lartes, an old tuſcane word neere our preſent pronunciation of lord or lordes, and ſignifying the ſame for which we uſe lord [z]. He condemnes that of allodium, and allodius, to give the origination of lords; butt agrees that in our antient Saxon it was written hlaford, and became afterwards to be pronounced laverd and loverd as is before noted; and in Chaucer's time frequently written lord and lordſhip, and lordings as in this place:

> For well ye know a lord, in his houſhold,
> Hath not every veſſell all of gold [a].

And the like is in many other places of this and ſeverall other antient engliſh writers. And in our time, the word my lord is become a new-coyned word by forein authors; as in French they ſay a mylord or milorte of England, and often uſe the words milords and milortes for our engliſh nobles. Soe in the epiſtles of Anthony Perez to the late earle of Eſſex; and in Rablais is ſaid, "ſo many milords of England." And in Latin they ſay "one of the degree of milord in England [b]."

In Scotland there is a difference between their lords or parlementary barons, and their lairds or barons only by name: for thoſe freeholders, not parlementary, are no longer honorary or barons in the beſt degree, butt meerly as poſſeſſors of a ſmalle territory;

[z] Tit. hon. p[t] i. p. 59, 61. [a] The clerke of Oxford's tale. The wife of Bathe's tale, etc. [b] Paſquier Recherches, lib. ii. p. 502 & 599.—Un milort d'Engleterre.—Rablais, lib. iv. c. 33.—P. Mathieu hiſt. lib. iv.—Tant de milords, etc. Ex ordine milordico Angliae.

and are (being lairds) below knights, and with them reckoned as our commons which conſiſt in freeholders. Butt thoſe other which are part of the lords temporall, and have the title of lords as with us, are in proportion with our lords in England.

Both with them, and us, the title or appellation of my lord is given to the king himſelfe; as, my lord the king: and the king of England wrote himſelfe lord of Ireland, when he had all regall power and rights there, as hath bin noted. And this is agreeable to the uſe of the word lartes or lars, before remembred, which in the tuſcane language ſignifies a prince, and is ſo uſed by Cicero. And lar doth yett remaine a word for a chiefe houſe, about Bayeux in France [e].

We ſay alſo, my lord the prince; and the king's vice roys in Ireland are called my lord lieutenant, my lord deputy, my lords juſtices, etc. So the lord guardian, the lagevard of England. This title was alſo given to all biſhops, and to abbots, priors and the graund maſter etc. who were ſummoned to parlement.

We alſo give the title of my lord to divers temporall officers, as to the chancellor, treaſurer, high conſtable, generall, marſhall, admirall, privy ſeale, ſteward, chamberlein, warden and others; and, to the two chiefe juſtices and chiefe baron, to every judge in his circuite, and to the majors of London and Yorke. The Scotts (not without cauſe) ſay my lord colonell; and every tenant ſayes, my landlord.

[e] Philip. ix.—Joſ. Scaliger ad Propert. iv.

Butt the title of lord, as it is inherent to the perſon and by birthright, is only due to the ſons of dukes and marqueſſes, and the eldeſt ſon of an earle, by courteſy; and by right, to all thoſe who are members of the lords houſe in parlement: which is explained by that act of H. 6[d]. where ſpeaking of ſuch as make default of appearance uppon proclamation, "if ſuch a perſon be of the degree of a lord (as a duke, marqueſſe, earle, viſcount, or baron) he ſhall forfeit," etc. Which explaines thoſe degrees of peeres to be comprehended under the name of lord, and to be ſignified by that title, and ſo they muſt be named in legall proceedings: which extends not to the ſons of noblemen before mentioned, nor to engliſhmen who are lords by ſome title of Scotland or Ireland, or of a forein countrey; bicauſe they have heere the title of lord by courteſy only.

I ſhall conclude this ſubject with a few cautions, and precedents not improper for the remembrance and imitation of nobles, who may be pleaſed to thinke uppon that old and true ſaying, "that virtue is the only true nobility;" that "nobility of blood only is butt a meane thing in compariſon of virtue." "We are all borne alike, and are diſtinguiſhed only by virtue[e]." Butt that is a better diſtinction of the Beroeans, of whom the apoſtle ſaith, that "theſe were more noble than thoſe of Theſſalonica;" and gives the reaſon, in that "they received the word with all readines of mind, and ſearched the ſcriptures dayly whether thoſe things were ſo or no[f]." The nobles of Beroea did not waſte their pretious time in effeminate comptnes, vaine ſports or ſinfull debaucheries; like thoſe who

[d] 31 H. 6. ſtat. c. ii. [e] Juvenal. ſatyr. viii. Nobilitas ſola eſt ac unica virtus. Nobilitas ſanguinis nobilitas ſtercoris. —— Minutius Foelix Octav. p. 123. Omnes pari ſorte naſcimur, ſola virtute diſtinguimur. [f] Acts xvii. 11.

underſtand

underſtand not their owne intereſt. And of ſuch the prophet ſaith, " man that is in honor, and underſtandeth not, is like the beaſts that periſh." And his ſon ſaith of them, " that honor is not ſeemly for a foole." Butt he counſells them " to exalt wiſdome, and ſhe ſhall promote thee, ſhe ſhall bring thee to honor[g]." They muſt doe as the noble Beroeans did (butt I feare too few doe) ſearch the ſcriptures daily, the greateſt pleaſure the beſt imployment! and there they ſhall find, and it will prove true, that " he that followeth after righteouſnes, (not he that followeth after luxury and vanity) findeth life, righteouſnes and honor; and that by humility and the feare of the Lord, (not by pride and prophanenes) are riches, and honor, and life[h]." That God ſaith, " them that honor me, I will honor. That a man of God (not of this world) is an honorable man. That he that waiteth on his maſter (not on his owne pleaſures) ſhall be honored[i]." With many of the like inſtructions for nobles, from the word of trueth, which declare the true intereſt of nobility to be, in the firſt place, piety, humility, virtue and all manner of honorable and noble actions which create a man noble. They are excellently comprehended in the character of Job, the eminent patterne of true nobility, which deſerves the ſtudy and imitation of every one who is, or deſires to be inveſted with the title of a nobleman. It is thus ſett forth. " When the eare heard me, then it bleſſed me; and when the eye ſaw me, it gave wittnes to me." The reaſon of this great regard of this great nobleman Job, followes; " bicauſe I delivered the poore that cryed, and the fatherleſſe, and him that had none to helpe him; that was ready to periſh; (they are right noble actions) and theruppon (ſaith he) his bleſſing came uppon me; and I cauſed the

[g] Pſal. xlix. 20.—Prov. xxvi. 1.—Prov. iv. 8. [h] Prov. xxi. 21.—Prov. xxii. 4. [i] 1 Sam. ii. 30.—1 Sam. ix. 6.—Prov. xxvii. 18.

widdowe's

widdowe's heart to ſing for joy." Greater pleaſure to a noble heart than the enriching of taverners, fidlers or taylors, in prodigality, can be to the looſeſt liver. He proceeds in his honorable actions. "I putt on righteouſnes (an habit farre exceeding ſilver or gold lace or any gaity of rayment) and it clothed me. My judgement (not his imbroydered coate) was as a robe and a diademe. (The moſt ſplendid ornaments of a nobleman!) I was eyes to the blind, and feet was I to the lame. (Not a good cuſtomer to the taverne or playhouſe) I was a father to the poore; and the cauſe which I knew not I ſearched out." He was no father of illegitimate children, butt of the poore; he ſpent not his time in gaming or riot, butt in ſearching out the intricacies of cauſes, the property of a good judge, the quality of our nobles who are borne judges! Then he ſhewes his courage. "I brake the jawes of the wicked (not the head of a lacquey or vintner's boy) and pluct the ſpoyle out of his teeth." More honorable than to pluck a favour from a miſtris[k]!

Having thus demeaned himſelfe as a true nobleman ought to doe; the eſteeme which was theruppon had of him, and the countenance and honor due unto him, appear in the reſt of this excellent chapter.

"Then I ſaid, I ſhall dye in my neaſt, I ſhall multiply my dayes as the ſand." A long life and naturall domeſtick death is a bleſſing; butt to be cutt of in a fray, or to ſhorten ones dayes by a vitious diſeaſe is a great puniſhment. "My roote was ſpread out by the waters, and the dew lay all night on my braunch." Bleſ-

[k] Job xxix. 11.—Ver. 12.—Ver. 13,—Ver. 14.—Ver. 15.

ſings

ſings of proſperity, and quiet under his owne vine and figg tree; much bejond travayling to foreign regions, and returning with a change of religion or good manners! "My glory was freſh in me, and my bow was renewed in my hand." His reputation was untainted, and his body and mind uncorrupted. "Unto me men gave eare; and waited, and kept ſilence att my counſell." They gave attention to his counſell, not to prophane jeſts or ſcurrilous ſtories. "After my words they ſpake not againe, and my ſpeech dropped uppon them." Such weight was in his words, that none did reply to them: no lightnes or babling, butt ſpeech dropping uppon them; and ſo pleaſing to every one, that "they waited for me (ſaith he) as for the raine; and they opened their mouth wide, as for the latter raine." They longed to hear him ſpeak, from whom they learned ſo much inſtruction; whoſe words were not empty, butt refreſhing as the latter raine. "I laughed on them, and they believed it not; and the light of my countenance they caſt not downe." They were not captious; not apt to take exceptions att his mirth, whoſe jeſts were not bitter nor reprochfull: yett he was cheerfull with them and laughed on them; and they did not anſwear him in ſharpnes, nor diſeſteem him, nor caſt downe the light of his countenance. He concludes, "I choſe out their way (he was a duke and leader among them) and ſate as chiefe (ſo ſhall every one that demeans himſelfe as he did) and dwelt as a king in the army." In war as well as in peace he was principall, and as a king; he was crowned with this bleſſing, that he was as one that comforteth the mourners; than which nothing is more joyfull to a generous and noble ſpirit[1]!

Heere is the true character, and the certaine reward of a right noble man: that great reſpect which was given to Job he deſerved

[1] Job xxix. 18.—Ver. 19.—Ver. 20.—Ver. 21.—Ver. 22.—Ver. 23.—Ver. 24.—Ver. 25.

by

by his righteous, pious and couragious actions; and it is an excellent caution and exhortation to all nobles, to do as this noble man Job did; and then they will aſſuredly gaine the like honor and eſteeme of all good men, which will be the ſtrongeſt prop and ſureſt ſupport of themſelves, and their dignities. Then will they be truely noble and illuſtrious, ſhining lights to others, glorious inhabitants, and pillars of their countrey!

The power in councells and judicature, the priviledges and immunities of the nobles of this kingdome, are reſerved for the diſcourſe of other places.

CHAP.

CHAP. XXXIV

We commaund you.

THE latin word heere uſed, "praecipimus," doth properly ſignify a commaund, and in that ſence it is uſed by Saluſt; "my father commaunded me[a]:" and the commaunds of a father were not with them accounted triviall. In ſome writs, inſtead of the word praecipimus, is uſed the word mandamus, of the ſame ſence; and both doe ſignify, in a writ, the king's expreſſe commaund.

A writ is defined to be a formal letter or epiſtle of the king's, directed to any judge, officer, miniſter or other ſubject, commaunding, or authoriſing any thing conteined in the ſame letter to be done[b]. And ſo this writ commaundeth the high ſherife as followeth. And the high ſherife is the proper officer for executing the king's commaunds: wheruppon Coke ſaith, that the ſheriffe hath a threefold cuſtody committed to him. 1. Of the life of juſtice[c]; bicauſe no ſuit begins, and no proces is ſerved butt by the ſherife, uppon commaund from the king by his writ; and all writs or precepts, ſo are they called, did from the beginning iſſue from the mouth or hands of the king[d]. And the ſherife alſo, by the king's like commaund, is to returne indifferent juries for the tryall of mens lives, liberties, lands, goods, etc. 2. The ſherife hath the cuſtody of the life of the law[e]; he is after long ſuits, by like command of the king, to make execution, which is the fruit and life of the law. 3. The ſherife hath the cuſtody of the life of the commonwealth[f]; being

[a] In Jugurth. Pater meus mihi praecepit. [b] Theloet. Digeſt. des Lettres originals, f. 1. [c] on Litt. f. 168. Vitae juſtitiae. [d] MS. Sir Rog. Owen, p. 9. [e] Vitae legis. [f] Vitae reipublicae.

principall conſervator of the peace within the countey, which is the life of the commonwealth [g].

Surely the ſherife is a great officer, as before hath bin in part noted; and he is called vicecomes, bicauſe he is, inſtead of the earle of that countey, who in antient time had the governement of the countey under the king: as the mirroir of juſtices ſaith [h], that it appeareth by the ordinance of antient kings, before the conqueſt, that the earles of the counties had the cuſtody or gard of the counties; and when the earles left it, then was the cuſtody of them committed to viſcounts who therfore are called vicecomites "bicauſe they ſupply the office of the earle [i]." One calls this office "a judiciary dignity;" another ſaith it is an office of dignity, which is agreed by all [k]. And it appears by the lawes of Edward the confeſſor, that a countey in the time of the Romans was called a conſulatus, and the officers whom we now terme vicecomites, they called viceconſules: wherby appears, that the like officer as our ſheriffe was in the Romans time heere, who was a miniſter to the king's courts of law and juſtice, and to execute his legall commaunds; and had then a countey court called the conſulary court, wherin it is ſayd, he did ſupply the conſular office in lawe and juſtice [l].

Writs are deſcribed by that learned knight Spelman, to be membranes with the king's ſeale affixed to them, wherby the prince with an imperatorian brevity commaunds or prohibites any thing [m]. There is much difference between a verball perſonall commaund of the king, and his legall commaund under the great ſeale: by the

[g] Vita reipublicae pax. [h] C. i. §. 3. [i] Ockham. c. Quid centur. Porro vicecomes dicitur, quod vicem comitis ſuppleat. [k] Marculphus. Judiciaria dignitas.—Lamb. f. 129. 12. [l] Curia conſulatus ipſius vices ſupplebat, in jure et in foro. [m] Gloſſarium. verb. Breve.

former,

former no man's life or freehold is to be taken away; by the latter, his commaunds extend to life, liberty and property, according to lawe, and the judgements of the king's courts of juſtice. And this diſtinction appears fully in the bookes of lawe, and was acknowledged by king James in that paſſage related of his paſſion (as who is free from it) when being diſturbed and affronted by a rude fellow, he in chollar bid, "take him away and hang him;" butt preſently returning to his own temper and good nature, he inquired for the man; and ſome of his merry ſervants telling, that the fellow was hanged as his majeſty commaunded: the king replyed, that his verball commaunds were not to be extended to his ſubjects lives; and was well pleaſed, that they had not executed that commaund. Which would not have excuſed the fact, according to that axiome, to commit an evill action, by principall commaund, doth not ſometimes excuſe it[n]: and what is in itſelfe wicked and diſhoneſt can be defended or confirmed by no praetext, by no ſuperiour commaund att no time. Therfore the inſtance is given in the roman officer, who att the commaund of Julian the emperor burnt the church of Berinth, the metropolis of Phoenicia: yett notwithſtanding this excuſe, he was compelled by Jovinian to rebuild the church att his own charge, and hardly eſcaped death for his former fact, though in execution of the emperor's commaund[o]. Butt as king James ſaid truely, where the king commaunds by his writ under the great ſeale, thoſe commaunds are not to be diſobeyed, nor diſputed by the proper officer (as heer) to whom they are directed. Therfore Juſtinian aſſerts, that he commits the injury, who commaunds it to be done; and he is in no fault who is bound to obey[p], as the ſheriffe by this writ is obliged

[n] Theodorét. Hiſt. eccleſ. lib. iv. c. 22 —Nicephor. lib. xi. c. 28. Mandato principali facinus commiſiſſe aliquando non excuſat. [o] Herodian. Decret. p. 295. Magnus comes largitionum. [p] F. 278. Is damnum dat qui jubet dare, ejus vero nulla culpa eſt, cui parere neceſſe ſit.

in the duety of his place. And it is adjudged in our law, that if an illegall writ come to a ſherife, he is not to examine or judge of the legality or illegality of it, being himſelfe butt a miniſteriall officer for the execution of the king's commaunds by writ; and the ſame being under the great ſeale of England is a ſufficient warrant, and obligeth him to the execution of it: nor is he lyable to be queſtioned for the ſame, although the writ be not according to lawe, wherof he is not the judge.

As to the choyce of members of parlement, he is the only proper officer. And ſo he is for the choyce of coroner, verderors and regardors, uppon a writ commaunding him therunto. Though in ſome private cauſes where himſelfe may be concerned, proces is to be directed to the coroner, commaunding him to doe what otherwiſe the ſherife ſhould have done.

CHAP.

CHAP. XXXV

Firmly injoyning.

THIS is a ſeconding or inforcing of the king's commaund, he doth "praecipere," and firmly injoyne: his command muſt not be neglected nor diſputed by his miniſters, when it is thus ſolemne and legall by writ under the great ſeale. It muſt be firme, not to be changed, fixt and conſtant. It is not for kings and their miniſtry to waver, and be inconſtant in their commaunds; butt firme, ſtable and immoveable, as the latine word in the writ "firmiter" doth beare. And ſuch a conſtancy and ſtability produceth the better effect in all proceedings; according to that of Plautus. "Truely the more firmely any man doth manage his affayres, ſo it proceedes accordingly [a]." Thus the ſtile of our kings in their commaunds is full of prudence and majeſty, voyd of lightnes and inconſtancy: it is agreeable to that advice of Saluſt, "Conſult before you begin any great buiſnes; and when you have conſulted, proceed firmly and maturely to the performance of it [b]. The ſame is ſayd in fewer words by Seneca, "Be long in adviſing, firm and ſpeedy in acting [c]. Charron notes, that irreſolution on the one part, and afterwards inconſtancy and inſtability are the moſt common and apparent vices in the nature of man; wherby "we eſcape as it were from ourſelves, and we ourſelves rob ourſelves [d]." Seneca ſaith, that "unſtableneſs, and fluctuation, is the greateſt ſigne of an ill minde [e]." And he that is ſhaken like a reede, now this way now that way, and not firme in his reſolutions, is a man altogither incogitant, imprudent and not ſound [f]. This want of

[a] Perſa. Atque Ædepol firmé ut quiſque rem accurat ſuam, ſic ei procedit.
[b] In Catilin. Priuſquam incipias conſulto, et ubi conſulueris maturé facto opus eſt.
[c] In proverb. Diu delibera, cito facito. [d] De la Sageſſe, c. xxxviii.—Ipſi nobis furto ſubducimur. [e] In proverb. Maximum indicium malae mentis eſt fluctuatio.
[f] Car. Paſchal. lib. de vit. et virtut. c. xxxv.

firmnes,

firmnes, this inconſtancy is defined to be a ſpeciall crime of imprudence, fayling to performe a good purpoſe [g]. The orator demaunds, what is more ſhamefull than inconſtancy, mutability and levity [h]. The word of trueth reproves it, where the apoſtle ſaith, "I marvel that ye are ſo ſoon removed." And in another place he ſaith, "that we henceforth be no more children, toſſed to and fro, and carried about with every wind of doctrine; by the ſleight of men, and cunning craftines, wherby they lie in wait to deceive [i]." St. James deſcribes them fully, "that a double-minded man is unſtable in all his wayes [k]." Butt the king ſayes heere in his writ, "firmly injoyning:" and it is kingly to be firme in his reſolutions and commaunds; his heart and his determinations ought to be like Job's heart, as firme as a ſtone; his precepts and decrees like that of Darius, who with his princes and captains made a firm decree, which is a royall ſtatute [l]. The true embleme of a gallant prince is a ſalamander, which lives in the fire that conſumes all other things, and is conſtant in the greateſt daungers. So the father alledges, "that grave men have their foundation on a firme rocke, on ſolid ſtability;" and are not ſhaken with ſmalle winds, no not with ſtormes and tempeſts, to change their good purpoſes [m]." The poet could affirme of himſelfe,

> The reſolutions of my minde
> Are fixed, and do firmly binde [n].

The ſacred and prophane ſtories are full of examples of the levity of ſome, and the unhappy conſequences therof; and of the firmnes

[g] B. Thom. Secunda ſecundae, 9. 55. art. 2. [h] Cicer. 4. Tuſc. 7.
[i] Gal. i. 6.—Eph. iv. 14. [k] Jam. i. 8. [l] Job xli. 24.—Dan. vi. 7.
[m] S. Cyprian. lib. iv. ep. 2. Graves viros ſuper petram robuſtam ſolida ſtabilitate fundatos. [n] Ovid. epiſt. Permanet in voto mens mea firma ſuo.

and

and ſtable conſtancy of others, with the great benefits therby gained. Butt the recitall of them would prove too voluminous. I ſhall propoſe the advice of the holy apoſtle, applicable to all great actions, eſpecially to matters of faith: "Lett us hold faſt the profeſſion of our faith without wavering [o]." So ought princes to performe all their juſt and worthy undertakings and purpoſes, without wavering: for ſaith another apoſtle, "He that wavereth is like a wave of the ſea, driven with the wind, and toſſed [p]. Butt he that is firme in his righteous purpoſes," the pſalmiſt pronounceth "ſhall not be afrayd of evill tidings," and he gives the reaſon, "Bicauſe his heart is fixed, truſting in the Lord [q]." So ought princes to be firme and fixed in their good purpoſes, and juſt commands: not light, or wavering: butt having done their duety, to truſt God with the ſucceſſe, who is the great governor of all things.

[o] Heb. x. 23. [p] Jam. i. 6. [q] Pſal. cxii. 7.

CHAP.

CHAP. XXXVI

That proclamation being made.

BY intendement of law, the freeholders of every countey are ſuppoſed to be preſent att every countey court: yett ſo carefull is the law to avoid any ſurpriſal of them, and to give due notice to them in a matter of ſo great conſequence to them, as is the choice of their deputies to ſerve in parlement; that the writ commaunds the ſherife to publiſh, by proclamation beforehand, the day and place of the execution of this writ; to the intent that all perſons intereſted may, if they pleaſe, be preſent att it. And this agrees with the derivation of the word in Cowell, "To proclayme is openly, and very much to crye out[a];" to ſpeake aloud, that he may be the better heard by the ſtanders by. He calles it a publique notice given, of any thing wherof the king thinketh good to advertiſe his ſubjects. As he doth commaund the ſherife by this writ, that proclamation be made of the day and place of the execution of it.

We find as antient as E. 1. time, in the rolles of Gaſcony, a graunt by the king to one and his heirs; of the right of proclayming att Bayone, with all things therunto belonging; rendring therfore to the king a rent. And in the ſame king's reigne, a proclamation, uppon the baniſhment of the Jewes, that every one ſhould reveale their debts; and that none can pretend he knew not of the proclamation[b].

[a] Hoc verbo. Proclamare eſt palam et valdé clamare. [b] 8 E. 1. Rot. Vaſcon. m. 4. Cridam ſive jus proclamandi apud Bayone, cum omnibus pertinent. ita quod reddat inde regi, etc.—21 E. 1. Plees en parlement. Lib. apud Turrim, f. 60. b.

By

By the ſtatute of articuli ſuper chartas, magna charta is to be delivered to every ſherife, to be by him read four times a year before the people in the full countey, and the like for the ſtatute of Wincheſter: and there is much of proclayming of ſtatutes in the record of the thirtieth year of this king, and in the reigns of moſt of his ſucceſſors. As proclamation uppon writs concerning the ſtaple, and other forrein and domeſticke matters in the time of our king E. 2; touching fayres in E. 3. time, and publiſhing of ſtatutes, forbidding to goe bejond ſea; and the lady Segrave and ſeverall others were puniſhed for doing things contrary to the forme of the proclamation, or defence of the king [c].

In R. 2. time, the ſtatute of Wincheſter was ſent into every countey to be proclaymed, and for perſons indicted to render themſelves. H. 4. by proclamation reſtraines ſale of victualls and wine, etc. and it is enacted in his time that proclamations be awarded againſt riotors. And this very clauſe of the writ is in his time enacted. H. 5. proclaimes, that none ſhall wear a ſword in the king's court. Of writs to the biſhop, againſt aſſaulting lords of the parlement, for wages of knights of the parlement, againſt perſons indicted. Uppon fines. In this king's time (H. 7.) a caſe was adjudged, that a latter commiſſion of aſſiſe, proclaymed in the countey, doth not make voyd a former commiſſion without perticular notice. Butt a proclamation uppon an exigent, a writ of right of gard, or a writ of meſne every man

[c] 28 E. 1. c. i.—28 E. 1. c. xvii.—P. 30. E. 1. rot. 101.—13 E. 1. c. x.—13 E. 1. c. xxxv.—1 E. 2. and 2 E. 2. Commun. in ſcaccario.—9 E. 2. pat. p^{t} 2.—14 E. 2. pat. m. 23.—2 E. 3. c. xv.—5 E. 3. c. v.—17 E. 3. Brevia regis.—36 E. 3. BR. term. P.—43 E. 3. ſtat.—12 E. 3. rot. clauſ. p^{t} i. m. 2. dorſ.—31 E. 3. c. ii.—25 E. 3. St.—38 E. 3. clauſ.

in the countey is bound to take notice of. And thoſe writs are not good without ſuch ſolemne proclamations[d]. About exigents and outlaryes in H. 8. time, and of the king's auditors, and of ſeverall ſtatutes. So in E. 6. time about writs and ſeverall other perticulars. And many in queen Elizabeth's time about recuſants, bankrupts, excommunications, ſervants and perjury, and ſundry other perticulars. And in king James his time alſo, touching the like matters. Butt I may have bin too perticular already[e].

Among the Jewes we are informed of proclamations uſed in their governement; and when a condemned perſon went to be executed, a cryar went before proclayming[f], that ſuch a one, the ſon of ſuch a one, came forth to be ſtoned, and ſuch were witneſſes againſt him: and if any could ſhew that he was innocent, he was to make knowne his reaſons.

They had their proclamations in Italy, as appears by Matchiavel. In Germany, as is teſtifyed by Thuanus. And the teſtimony of Paſquier, for them in France[g]. In Sweden the meeting of their rickſday is proclaymed with the ſound of trumpetts and kettle drummes, by a formall officer in a ſolemne manner, for the time and place of it. And the like uſe of proclamations

[d] 7 R. 2. c. vi.—3 R. 2. c. iii.—T. 8. H. 4. BR. rot. 15.—13 H. 4. c. vii.—7 H. 4. c. xv.—H. 2. H. 5. rot. 65.—9 H. 6. c. 11.—11 H. 6. c. xi.—23 H. 6. c. xi.—8 H. 6. c. x.—4 H. 7. c. xxiv.—Kellaway, f. 116. a. b. [e] 6 H. 8. c. iv.—33 H. 8. c. xxxix.—32 H. 8. c. ix.— 33 H. 8. c. ix.—1 E. 6. c. x.—5 E. 6. c. xxvi.—13 El. c. ix. vii.—29 El. c. vi.—5 El. c. xxiii. and c. iv. and c. ix.—1 Ja. c. xv.—3 Ja. c. iv. [f] Lib. ii. de ſynedr. Seld. p. 534.—Miſna, tit. ſanhedr. c. vi.—Praeco anteibat clamitans, etc. [g] Hiſt. Fiorent. lib. ii. f. 66. Fere per bando publicare.—Lib. xxxix. 830.—Recherches, f. 161, 162.

in all countryes is uſed, and is neceſſary to give publique notice in all matters requiſite.

Butt I muſt check myſelfe in a matter ſo univerſall, ſo generally practiſed and ſo well knowne to all, not to ſpend ſo much pretious time and leiſure.

CHAP. XXXVII

In your next countey court.

THERE (as is before noted) the freeholders of the countey, whom this buiſnes chiefly concernes, are intended to be preſent; and therfore, moſt proper in that place to give the notice.

This countey court is the place where juſtice is adminiſtred to the inhabitants of the countey, and therfore hath the name of court, wherof ſomwhat in this place; reſerving other matters relating therunto to other places.

The Latine of the writ in this place, ſaith only, " in your next countey[a]:" butt the word court is to be underſtood, and ſignifyed by the uſe of the word " comitatus" in this place. Of which, by itſelfe, another opportunity will be given of diſcourſe: and I hope it may be not impertinent or unpleaſant, uppon this occaſion, to ſhow the ſeverall acceptations of the words court, and of curia, curtis, cortes, curtilagium, curatus, etc. of the ſame etimology, and from whence our word court ſeemes to have had its derivation; and from whence may be noted the beginning and varying of the word, and ſome light and example therby in matters of antiquity, and ſtory of the like nature.

The loweſt acceptation of the word is from curtis, which in Greeke ſignifyeth a cage or coule, wherin to keepe birdes. The Romans called it cortem and cohortem, a place in a countrey houſe incloſed where they uſed to keepe geeſe, duckes and other birds

[a] In proximo comitatu tuo.

for

for proviſion of the table [b], and which our farmers wives uſe to call their poultrey-houſe or hen-houſe. From hence it came to be applyed to a heyſe or yard of huſbandry; from thence, to a gentleman's and nobleman's ſeate, and to a king's pallace; from thence, to tribunalls of juſtice, and to the meeting of the ſupreame publique councells. From ſuch meane beginnings moſt of our higheſt, and greateſt humane gloryes have their extraction; and may be a ſeaſonable note of humility to all who are, or may be, concerned in this word court. "Acknowledge (ſaith Spelman) from what meane (if I may not ſay ſordid) beginning did ariſe the theater of humane majeſty [c]."

From hence it went a little higher; cortes was taken for a huſbandman's yard or heaſe, and curia, curtis, curtillage, curtillum, for a yard or court before a houſe, and for the ground incloſed about a houſe; ſometimes likewiſe, for a garden of herbes or kitchen garden, and in an old MS. gardiners are called curtilers [d]. A little above that we find the word court uſed for a countrey cottage; as it is ſayd in the ſalick law, "the dogge the keeper of the houſe or courte" when all were gone forth to worke [e]. And, for a farme, with the lands layd to it, which the French call curtis; as the Italians, manſus [f]. So is that to be taken: "he graunted to St. Benedict 18 courts of his patrimony," that is 18 farmes [g]. Bracton uſes the word for an houſe and place of dwelling: ſpeaking of one eſſoyned for

[b] Κυρτίς.—Varro, lib. i. c. 13.—Pallad. lib. i. tit. 22, etc.—Martial. Raidcae cortis aves.—Ovid. Abſtulerat multas illa cohortis aves. [c] Gloſſar. verbo Curs. Agnoſce é quam humili (ne dicam ſordido) initio theatrum illuxit humanae majeſtatis. [d] Leo. Marſic. Caſſin. lib. i. c. 36.—Leg. Inae, MS. c. xl.—Lib. Ramſey, ſect. cclxxi. —Provinc. Angl. lib. iii. tit. de Dec. [e] Tit. vi. §. 3. Canem cuſtodem domus ſive curtis. [f] Leo. Marſic. Caſinens, lib. i. c. i. [g] 18 patrimonii ſui curtes S. Benedicto conceſſerat.

ſicknes,

ſicknes, he ſaies, " the party eſſoyned muſt not go out of his court," leaſt he be intercepted and looſe his ſeiſin; for, ſaith he, " if the demandant know that he goes out of his court or houſe, or by chance find him in his court, he may lay hands on him [h]." According to this it is ſayd, that the word court in Dutch and Engliſh ſignifies butt a houſe. And Eadmerus ſpeakes of one that " built a court for himſelfe [i]."

Curia alſo ſignifies a family; " as a loafe of the court," a houſhold loafe or a loafe of the family [k]. And ſo, many families togither, many ſeates of noblemen and gentlemen heere and in Fraunce are called courts; and the king's houſe or pallace is called the king's court, and his ſervants, courtiers. Thus it was among the Gothes. One ſaith that " the yard of the court was incloſed with a large compaſſe, ſo that the greatnes therof ſhowed it to be the king's court [l]." And both with us, and with the Italian, Spaniſh and French, corte, cortile, and court ſignifies the king's pallace. Aſſer Menevenſis writes alwayes, " brought up in the king's court," etc. So in another place, " I remained 8 moneths att that time with the king in the court [m]." Antiently, and in H. 3. time and before, and ſometimes after, hoſpitium generally was the latin word for the king's houſe, where he lay; and curia, ſeldome uſed for it: as may be gathered by the letters patents of the ſtewards, and marſhalls in thoſe dayes, called ſeneſchalli hoſpitii, et mareſcalli hoſpitii. And Britton uſed the ſame word in old French [n]. Butt for many years,

[h] F. 358. Nec exire de curia ſua.—Si petens ſcit eum extra curiam ſuam, vel in curia ſua forte ipſum invenerit. [i] MS. Sir Rog. Owen, c. vii. 2 p[t], f. 2.—F. 7. art. 30. et f. 8. art. 10. Ædificavit et curiam ſibi. [k] Unum panem curiae. [l] Jornand. de reb. Get. c. xxiv. Area vero curtis ingenti ambitu cingebatur, ut amplitudo ipſa regiam aulam oſtenderet. [m] De geſt. Ælfredi. In curto regis nutriti.—Cum rege illa vice 8 menſibus in curto manſi. [n] Hoſtel du roy.

and

and att this day, the dwelling houſe of the king and his children, and of divers of the nobility and gentry, are called courts. And ſo it is in France, where they ſay "the king's court, the dauphine's court, the monſieur's court," etc [o]. Likewiſe in Latine, curia ſignifies the place where the prince or great officer dwelles; hence were the curiales comites called. And in Spayne curia ſignifieth the towne where the king lyeth [p].

Varro affirmeth, that from the company of birdes kept in countrey houſes for proviſion, which they called cortes and cohortes, the troupes and companies of ſoldiers came to be called alſo cohortes; and the king's family, where many people were, came to be called court [q]. The word curia was alſo taken for partes of the people: as when Romulus divided them into 30 partes, they were called curiae, to which 5 more were added; and they were the 35 curiae or tribes of the Romans, as there were 12 tribes of the Iſraelites. And ſome of the romane cittizens were called curiones [r].

Another acceptation of the word was more ſacred among the Romans: as Cicero [s] ſpeakes of the curia called the temple of holynes; and there were curiales flamines, prieſts of courtes, and curiales menſae, altars on which they ſacrificed to Juno, who was called Curis; and with them the word curio ſignifyed the prieſt of the court, which the French interprets the maſter of a court, their ſacrificer. The Italians alſo ſay a curio, or a prieſt [t], the Spanyards ſay cura, and is the ſame with our curate who hath the ſpirituall charge of a warde or tribe; wherof Varro writes, "that in courts, the prieſts

[o] La court du roy, du daulphine, du monſieur, etc. Chriſtopher de Paze. [p] Digeſt. Code.—
[q] Ling. latin, lib. iv. [r] Sextus. Papyr.
[s] Pro Milone. [t] Sacerdos curiae.—Le maiſtre d'une curie, leur ſacrificateur.—Curione, prete.

did

did take care of divine matters, as the ſenate did of humane affayres in the curia hoſtilia[t]," etc. Plautus calles a poore leane lambe, agnum curionem; and Apuleius, on the contrary, calles a fatt lambe, incurionem[u]: perhappes not unagreeable to that phraſe which, with us, ſome uſe when they call a leane pigge, a tithe pigge. Curiaca in Greeke ſignifies the dwellings of God; and every chiefe prieſt was called chiefe curate[w]. With us, he that exerciſeth the charge of the miniſtry is called a curate; and the function itſelfe, the cure of ſoules[x]. It was very antient with the Romans to call thoſe places, where they exerciſed holy rites, curiae, even in the time of Romulus; and the ſame is mentioned by Virgil.

Thither did all reſort,
This temple was their court[y].

Butt the ſignification of this word court, as it is more proper to our preſent purpoſe (though all the ſignifications of it have a dependance uppon one another) is as it is taken for a tribunall, or place where juſtice is adminiſtred; and, for a publique councell, the ſupreame tribunall of juſtice and legiſlative power of a nation.

With the Graecians kuria is power, dominion and authority, and kurios[z], whom we call lord; and the Latines dominus is one furniſhed with power, who exerciſeth judgment. Kuriologia is a ſound narration of a matter, which is called placitum, a plea[a]. Kurion, an authentique writing or recorde. Kureo, to approve or decree, and a ſentence or vote in councell. And the Athenians uſed

[t] In curiis ſacerdotes ita res divinas curabant, ſicut ſenatus res humanas in curia hoſtilia, etc. [u] In Aulul.—in Florid. [w] Κυριακα.—ἀρχιερεὺς. Curio maximus. [x] Curam animarum. [y] Æneid. vii. Hoc illis curia templum. [z] Κύρια.—Κυρίος. [a] Κυριολογία. Placitum.

the word for the publique councell itſelfe [b]. Butt others will not have the word curia derived from the Greeke kuria, how neere ſoever in letters or ſignification. Some canoniſts would have it curia, à cruore, bicauſe of criminall juſtice. Varro brings curia from cura, bicauſe in court the publique cares of the people were undergone. All of them agree with the notion of it amongſt us, as att this day.

It is true, that in the Saxons times, the ſeverall tribunals and publique councells heere were called gemots; as the ſwanimote, halmote, wardmote, burghmote, hundred gemot, ſcire gemot, folcmote, and wittena gemote; moterne, the place of meeting, and motebel, the bell that was runge to call them togither; and all were from the ſaxon word gemettan [c] that ſignifies to meete, and gemote the meeting, the aſſembly; and we ſay att this day the lords and commons aſſembled in parlement. And ſo the French called their publique councells, the aſſembly of eſtates; according to that of the Hebrewes, where there were many collegues (as it is in judicatories) ſitting togither, they called it a ſanhedrim, that is a ſitting togither an aſſembly or meeting togither, ſo called from the greeke wordes which were alſo uſed by the Graecians in the ſame ſence. The like, of the talmud; and familiarly amongſt ſchollars that is called the booke of the ordinary judges mett togither; in which ſence Paulus Riccius calles it the booke of the ſenators mett togither: and of the ſanhedrim in the temple it is ſaid, they were called ſanhedrims, as it were meetings or ſittings togither. In the evangeliſts and acts of the apoſtles it is mett with as in the old teſtament, in the ſame notion with the Hebrewes; and in

[b] Κύριον.—αὕτη κυρία. [c] Gemettan.

the Latine is ſo rendred, an aſſembly or meeting, and ſo our engliſh tranſlations reade it [d].

Bertram often mentions generall meetings of the Iſraelites by the names of the generall aſſembly, or meeting togither of the cittizens or aſſemblies of Iſrael, the meetings of ſenators, of the multitude, etc. Such meetings are ſometimes in the Latine called conciones, a calling togither of people, a congregation; and of the like meaning is the word church, eccleſia, the preſbitery, or auditory; all importing a meeting of people togither, being called or ſummoned [e]. The hebrewe word for it hakkahal [f], comes from the roote kahal, that is he congregated, aſſembled, or called the people to meet togither; and from thence is the word kahal alſo for a congregation, or company of people called and mett togither.

Concio or coetus is alſo interpreted to be "a frequent aſſembly, or meeting or comming togither of the cittizens, called by authority of the magiſtrate att fitting times and places [g]." The greeke word affords the like interpretation; and is rendred by the Latin an aſſembly, a meeting, a congregation, a councell, a comming togi-

[d] L'aſſemblées des eſtats.—Jo. Druſius ad difficil. loc. Num. c. xlviii.—Buxtorf. Lexic. Talmud. col. 1509, 1513.—Seld. de Syn. lib. ii. p. 106.—Συνέδρα, συνεδρία, συνεδρεῖ, συνέδριον.—Scaevol. lib. ult. tit. Decret.—Liber judic. ordinariorum.—Jo. Buchon. ad ſentenc. iii. diſt. 2. quaeſt. 3. art. 1.—Petrus Comaſt. Hiſt. eccleſ. reg. iii. c. 15. Vocabantur ſynedrae quaſi conſeſſus.—Prov. xxii. 10. and xxiv. 8. and xxvi. 26. and xxvii. 22.—Judith. vi. 4. and xix. 11.—Matt. x. 17. and xxvi. 59.—Mar. xiii. 9.—Acts v. 21, 27.—Concilium, conſeſſus, etc. [e] P. 74. Univerſalis civium coetus. Coetus Iſraelis. Senatorum coetus. Agmen.—2 Chron. xxx. 2. Ἡ ἐκκλησία, πρεσβυτέριον, ἀχροαλήριον. [f] קהל, הקהל [g] Cragius de rep. Laced. lib. ii. c. 7. Conventus civium frequentior, magiſtratus auctoritate, in loco et legitimo tempore convocatorum.

ther

ther of the cittizens, a ſynode [h]; all relating to the meeting of perſons; and ſo frequently uſed by them for all kind of meetings, that Ariſtophanes applyes it to the meeting of good wives a goſſeping [i]. The Lacedemonians and Athenians called their publique councells by that name, and from their word, to call: the Romans had their called councells, and their curia calabra, from calling, bicauſe the people were called to meet there [k].

The word preſbitery is properly the congregation or meeting togither of the elders [l]; and comes from the greeke word which ſignifies I undergoe an ambaſſy, I tranſact or doe any thing as a deputy, I intercede for another [m]; the proper buiſnes and worke of members of councells mett togither as deputies, and ambaſſadors of the people. And it is very much to note the conſent of our old word gemote, to that of the Hebrewes, Graecians, and other nations wherby they ſignified their tribunals, and publique councells; for which they had alſo ſeverall other names antiently, as an auditory, a place of meeting of the people to heare what ſhould be ſaid unto them [n].

The Germans call them diets, as the antient Gaules did; "they mett in diettes:" and the Italians have the word in the like ſence; "Thoſe of the league made a diete att Cremona [o];" and Guicchardine hath the word in the ſame ſence. It ſignifies in low Dutch,

[h] Ἐκκλησία. Coetus, concio, congregatio, concilium, conventus civium, ſynodus, etc. [i] Ἐκκλησιάσεσθαι. [k] Menochius, col. xlvi.—Καλέω.—Comitia calata à calando, hoc eſt à vocando, vocata in eam plebe. [l] Πρεσβυτέριον. Seniorum congregatio. [m] Πρεσβεύω, legationem obeo, in legatione quippiam ago et tranſigo, pro alio praecedor intercedo. [n] Ἀκροαλήριον. [o] Paſquier Recherches. Diettes.—Matchiavel hiſt. Fior. lib. viii. f. 242. b. Fece la lega una dieta a Cremona.

the people; butt others derive it from the greeke word which ſignifies feeding togither in a houſe, which we call diet [p]: and their word mal, for a publique councell, ſignifies alſo feeding, from whence might come our word meale and meales-meat; and both of them beare the ſence of a houſe of juſtice, or meeting of people for juſtice. Diet they interpret the opinion in judgement; and mal, a meeting for lawe, a conference or parlement [q]. And ſome would have it ſo, bicauſe att meales diſcourſe and conference is had; though not ſo proper, about matters of judgement or councell. In the lawes of the emperor Charles the great it is ſayd, "Lett none delay to come to the mal," or meeting of juſtice, "one about ſummer, the other about autumn;" and mal is interpreted a place appointed for juriſdiction [r], the ſame thing as the old word gemote, and the later word court, with us doth notifie. The Germans have other words [s] of the like ſignification, for an aſſembly or congregation. The Swedes uſe the words rickſdagh and herdagh, that is the kingdome's day and the Lord's day, when they meet for the diſpatch of publique buiſnes.

Butt to returne to our word court, which was received in the place of the word gemote ſhortly after the Normans invaſion; and is now ſufficiently knowne with us to ſignify all manner of places where judges ſitt to heare cauſes, and to pronounce judgement; which are called the king's courts, and courts of juſtice, and that from the loweſt to the higheſt of them. So we ſay the court barons; and curtis is uſed for a mannor by Lindwood, "that it is a

[p] Διαίτα. [q] Minſhaw, hoc verbo; Dieta, arbitrium in judicio.—Mallus, conventus juris. [r] Lib. vii. c. 96. Ad mallum venire nemo tardet, unum circa aeſtatem, alterum circa autumnum. — Mallus eſt locus juri dicendo deputatus.
[s] Richtverſamlung.

manſion,

manſion, or a mannor to dwell in [t];" and the lord of it dwelling there, his tenants reſorted to him for juſtice, and theruppon it came to be called a court baron. So we ſay a court leet, a court of antient demeſne, a towne court: and the word cortis is uſed for a towne itſelfe, "as in the next towne, which they call a courte; and a moſt noble courte called Cliſme in Lombardy;" and the like [u].

So we ſay the hundred court, the countey court, the court of admiralty, of the exchequer, of the common pleas, king's bench, and court of chancery; the inferior courts, ſo called bicauſe kept in the place where the lords court or dwelling was, and ſuperior courts (which now are att Weſtminſter) ſo called bicauſe antiently kept where the king's court or reſidence was, wherof Sir Roger Owen writes [w]. It is not unknowne, that in the time of William the conqueror, and of many kings after him till the latter end of the reigne of king John, or the beginning of H. 3. time, the king held butt one high court of juſtice and equity, and that was in the common halle; and as the king removed, ſo did the court remove with him. Butt when it grew over-burdenſome to ſuitors to follow the court att every remove, it was among other the liberties of England obteined for the ſubjects, that the common pleas ſhould not any longer follow the king's court, butt ſhould be holden in a place certain. Heeruppon was a new court erected, and appointed to be held att Weſtminſter, called att this day the court of common pleas; and afterwards (ſaith he) the king, with the conſent of the ſtate of parlement, allotted pleas of the crowne to one court, common ſuits to another, and matters of revenew to a third: and att this day they and

[t] Provincial. Angl. lib. iii. tit. de decim. Eſt enim curtis manſio vel manerium ad inhabitandum. [u] Flodoard. hiſt. rem. lib. i. c. 17. In propinqua villa quam cortem vocant.—Lindenb. e Chron. Guelph. p. 183. [w] MS. c. vii.

the chancery are kept in Weſtminſter, which is the king's pallace; and the court of marſhalſey may, if the judges pleaſe, be now kept within his houſe, it being the court for his ſervants and within the verge.

Thus kuria ſignifyed among the Graecians, as hath bin noted: and Virgil [x] remembers the antient uſage, to have juſtice in the king's pallace. So we find in the lawes of the Lombards, "they ought to compoſe the matter, as the king's court ſaw fitt." And (ſaith Spelman) pleas and juridicall tribunals were called courts, bicauſe they were kept in the houſes of kings and of the nobles; and their vaſſals or tenants were called cortales, or peeres of court [y], who were the judges of thoſe pleas. The French call their tribunals of juſtice, "the court of parlement [z]." And that which is our ſupreame court of juſtice, and ſupreame councell, we call the high court of parlement. And ſhortly after the time of the Saxons wee find it ſo ſtiled by the writers; "as the higheſt court, the great court," and the like [a]. Bracton, our old author of law, gives it the ſame name. And Fleta ſpeaking of it, ſaith, "Alſo the king hath his court in his councell, in his parlements [b]." Which court, in the ſubſequent words, he explaines to be "an houſe of judgements. There are determined the doubts of judgements," etc [c]. Another of our antient authors in the French of his time ſaith, "We will, that our court doe judge of ſuch matters as the earles and barons doe in time of parlement [d]."

[x] Æneid. vii. [y] Lib. i. tit. 2. Componere debebant, ſicut curtis regia exigere videtur.—Verbo Curtis.—Pares curtis. [z] La court du parlement. [a] Coke epiſt. 9 rep. Curiam altiſſimam, curiam magnam. [b] Lib. i. c. 2.—lib. ii. c. 2. Habet rex curiam ſuam in concilio ſuo, in parliamentis ſuis. [c] Ibi terminati ſunt dubitationes judiciorum. [d] Britton, f. 41. Volons que noſtre court ſoit judge, ſicome counts et barons en temps de parlement.

In this ſence the old Graecians called their publique councell kuria [e], and the ſentence by ſuffrages. And the antient Romans had their curia hoſtilia, the houſe that Tullus Hoſtilius built for his pallace; and afterwards it became the chiefe councell houſe, whither the ſenators aſſembled, and mett there for the determining of ſtate matters [f]. And the court which Pompey built, therfore called curia pompeia, where other citty magiſtrates were admitted with the ſenators. And curia julia, which Julius made for forrein matters, and ambaſſyes [g].

The Germans uſed the word curia for their publique councells [h] untill the time of Maximilian 1. wherof many authorities are cited; as of the golden bull of the emperor Charles 4. publiſhed in the courts of Norimberghe, and Mentz. Their ſupreame councell or diet is alſo called by their authors, in the deſcription of it, the generall court, the great court, the ſolemne court, the court of the princes, with many of the like appellations relating to the worde curia. And their poet, ſpeaking of the emperor's holding of his publique councell, ſaith,

> " The court of the grave fathers, in much ſtate,
> Att the aſſembly he did celebrate [i]."

It hath bin before noted, that a court in the dutch and engliſh languages doth ſignify a houſe; and therfore as we ſay the court of parlement, ſo we alſo ſay the parlement houſe, and " the lords

[e] Κυρία. [f] Alex. Gen. lib. vi. c. 11. [g] Roſin. antiquit. lib. ii. c. 5. [h] Arumeaus de comitiis, p. 15. [i] In curiis norimbergenſi et metenſi, etc.—Radovicus, lib. i. c. 46. De geſt. Fred. 1. — Trithem. in Chron. Hirſchang. an° 1275. — Henric. Rebdorfenſ. an° 1299. Curiam generalem, magnam, principum ſolennam curiam, etc.—Concelebranda patrum ſolenni curia coetu.

houſe,

houſe, and the houſe of commons; the upper houſe and the lower houſe of parlement [k]." So in London they have an inferiour antient court of juſtice, which they call the huſtings, from hus which in the germane tounge ſignifies a houſe, and tings, that is pleas, buiſnes, judgements, things: huſtings, a houſe of pleas, buiſnes, judgements, thinges; and this word was in uſe before the Norman's invaſion, as appears by the records of that court yett extant, and by the name itſelfe ſtill in uſe among them. We ſay likewiſe the parlement chamber, the councell chamber, the ſtarre chamber, the exchequer chamber, etc. The like they have in France; " as the chamber criminall, the chamber of accounts, the golden chamber," and the like, where ſuch juriſdictions are exerciſed [l].

The hebrew word for the ſanhedrim is tranſlated " the houſe of judgement [m];" and their moſt eminent tribunals were ſo called. The Arabick is the houſe of law or judgement [n]. The german word for a ſenate, or court of councell, is proper for a houſe alſo: ſo is their word tranſlated a ſupreame court from the low Dutch, and a councell or meeting where lawes are made; hof and hove [o] being the proper wordes both for a houſe and court. The ſeverall eſtates being there mett in their diett, or ſupreame court, are called diſtinctly by the names of the colledge of electors, the colledge of princes, and 3. the colledge of cittizens [p]. So the parlement in France is called the colledge or houſe of the ſupreame judges [q].

[k] Domus ſuperior, domus inferior, domus parium, domus communium.

[l] Code des decis. forenſ. lib. i. tit. 53. La chambre criminelle, la chambre des comptes, la chambre d'oree.

[m] בית דינים Domus judiciorum.

[n] Domus legis vel judicii.

[o] Hove, et koniglicher hove.—Hofraedt, een opper hof.—Een hof, daermen dinght.

[p] Collegium electorum, collegium principum, collegium civium.

[q] Lupanus, lib. ii. f. 465. Supernorum judicum collegium.

And

And according to thoſe denominations of the Germans, the eſtates of Sweden being mett in their rickſdagh, or ſupreame publique councell, when they conſult aparte, each ſtate by themſelves in ſeverall places, where they meet and adviſe in diſtinct bodyes, they are called, the colledge or houſe of the clergy, the colledge or houſe of the nobility, the colledge or houſe of the burghers, and the colledge or houſe of the boores. It hath bin given as a note, that all the members, when they enter into this houſe of parlement, muſt leave att the doore therof all their paſſions, and reſpect of perſons, and act in this houſe as in the houſe of God, and as in his ſpeciall preſence.

CHAP. XXXVIII

To be held after receipt.

THE times of holding the countey courts in every ſhire are certaine, once a moneth, and this appears in the lawes of Edward the elder, then called folcmote, and ſcire gemote, and the ſherif's gemote, now called the countey court. It is held (ſaith Spelman) by the inſtitution of this king Edward, every fowerth weeke, as it is att this day, and there are determined many civill controverſies, and ſome praediall ariſing within the countey [a].

The time of holding the countey court is knowne to the freeholders, who by intendement of law are all preſent att them, butt the high ſherife taketh uppon him, ſometimes to adjourne the countey court to another time and place than the uſuall, eſpecially on the occaſion of chooſing members of parlement, yett it hath bin diſputed, whither without conſent of the freeholders, who are the judges of the countey court, he may doe it, yett the ſame is frequent, and not queſtioned att this day.

Uppon theſe words for proclamation to be made by the ſherife, att his next countey court after receipt of the writ, a queſtion hath bin ſtirred, whither the ſherife after receipt of the writ, and before the next countey courte, ought to proclaime the time of the election beforehand, that the freeholders may have timely notice, and be accordingly preſent att the election. Butt it

[a] Leg. Edwardi ſenioris regis Anglo-Saxonis, c. ult. ȝeneȝar ȝemot. — Gloſſar. verbo Gemot.

ſeemes

ſeemes by the following wordes, that he is not bound to make ſuch proclamation beforehand, bicauſe it is ſayd afterwards; of the day and place aforeſaid, that is not of the day and place of the election, or of the holding of the countey court, butt of the day and place of holding the parlement. And I am informed, that att the laſt aſſizes in Eſſex, the writ then comming to the ſherife, and that the day of holding the countey court, he did then, by advice of the judges, without making any former proclamation, or adjourning of the countey court, begin with the election of the knights of that ſhire.

CHAP. XXXIX

Of this our writ.

IT is truely ſaid, that all writs or praecepts of juſtice, in antient times, iſſued from the hands or mouth of the king [a]. And they are alwayes in his name and ſtile, therfore he calles it "our writ." And they are properly the king's writs. In the digeſt of writs, compoſed by Theloal, he cites Bracton's definition of writs, that they are called briefes or writs, bicauſe they recite the matter, wherof they treate, and the intention of the demaundant, in a few words briefly, as doth the rule of lawe, which briefly recites the thing that is [b].

Theloal's owne definition is this, a writ is a formal letter or epiſtle of the king's, written in the latine tounge, in parchement, ſealed with his ſeale, directed to ſome judge, officer, or other ſubject, att the ſuite of the king himſelfe, or att the complaint and ſuit of another ſubject, commaunding or authoriſing ſomwhat conteined in that letter, to be done, for the cauſe briefly expreſſed in the letter, which is to be diſcuſſed in ſome of the king's courts by the law [c]. Sir Thomas Smith commendeth our writs, that it was not poſſible to comprehend ſo much matter, ſo perſpicuouſly in fewer wordes, and he was a proper judge of it, being himſelfe a ſecretary. Certainly (ſaith the chiefe juſtice) originall writs are ſo artificially and briefly compiled, that there is nothing redundant or wanting in them [d]. The ſame ſecretary to our queen Elizabeth holds, that all the ſecretaryes of the Chriſtian world may learne to expreſs much matter in few and ſignificant words, from the forme of our writs. And they may fitly be called the king's writs, for brevity is imperatorian [e].

[a] MS. Sir Rog. Owen, c. vii. [b] Lib. i. p. 1. Bracton, f. 112 and 413.
[c] F. 1. b. [d] Coke on Litt. p. 73. [e] Brevitas imperatoria.

The

The Graecians have a word of the like ſound with breve, ſignifying a writing, which conteines the ſumme of the matter, as our writs doe [f]. And ſo is the expreſſion in the councell of Carthage, a briefe is called, an epitome, and a conciſe writing [g]. The word was in uſe in the empire in the third age after Chriſt, and afterwards in the church, from whence are the apoſtolicke briefs [h]. Theloal writes, that our writs begin with ſuch words, as the letters and epiſtles of the antient Romans did [i]; that the Germans to this day uſe the word briefe for every letter, or epiſtle; and the Normans uſe it for all manner of legall proces. The beſt example of brevity both for manner and matter of it, is that, where the apoſtle affirmes, if there be any other commaundement, it is briefly comprehended in this ſaying, namely, "thou ſhalt love thy neighbour as thyſelfe [k]," in which commaund indeed, there is very much matter conteined in a few wordes.

The antiquity of our booke of writs, called the Regiſter, is long before the conqueſt, and in the 26th year of E. 3. it is ſayd, that originall writs were in uſe time bejond the memory of man, and cannot be ſhowen, when the beginning of them firſt was. They are the foundations of the law, the great teſtimonies of the cleernes and antiquity of our common law [l].

It will not be neceſſary to diſcourſe of the ſeverall ſorts of writs, judiciall and originall, our authors are full of it, and of the difference between them. The writ before us is of that ſort, which are

[f] Βρεβίον. [g] Zonaras. Βρεβίον ἡ ἐπιτομὴ λέγεται, καὶ σύμτομος γραφή.
[h] Breve apoſtolicum. [i] Lib. i. c. 1. f. 1. b. [k] Rom. xiii. 9.
[l] Lib. Aſſiſ. 26 E. 3. p. 24.—Praefac. 3 rep. Co.

called

called, writs or letters of meſſage, which were of great antiquity with us, and in other nations [m].

The Graecians had two words neere the ſound of our briefs, and of the ſame ſence; they are as antient as Julian and Euſebius, who uſe them, and thoſe who wrote them they called, breviators [n], and an old gloſſary of the lawe interprets thoſe words, by epitome [o].

In the civill law both breve and brevis are in like ſence, and very often uſed for letters, and breves and brevia occurre in Theodoſius his code, Caſſiodore's precedents, Symmachus his epiſtles, and others of that time [p],

An exception is taken to our writ for being in the latin tounge, which cannot be altered butt by act of parlement (if it were inconvenient) and to diſpute that point requires much conſideration, and may be proper for another time. Before the reigne of E. 1. all writs originall and judiciall, and all the bookes of our law, as Glanvill, Bracton, Fleta, and Novae narrationes, and booke of entries, and all the ſtatutes yett extant were publiſhed in the latine tounge, and in his reigne, and the reigne of his ſon, and ſome of R. 2. are ſo likewiſe.

Butt we find an act of parlement in E. 3. time [q], reciting, that it is often ſhowed to the lords and commons, of great miſchief that the lawes be not kept, for that they be pleaded, and judged in the

[m] Bracton, f. 413.—Fitz. N. B.—Co. on Litt. f. 72, 73. praef. 3 rep.—Bracton, f. 328. b.—Regiſt. orig. f. 2. b.

[n] Βρέβιον, βρεῦιον, βρεβιάτορες.

[o] Juſtin. auth. 105. c. ii. Si autem §. 4.

[p] C. tit. de conveniend. fiſci debit. lib. v. de Apochis publ. lib. i. et tit. 42. lib. i. Reſtored by Gothofred.

[q] 36 E. 3. c. xv.

French

French tounge, which is much unknowne in the realme; ſo that the people have no knowledge of that, which is ſayd for them, or againſt them; and that reaſonably the lawes ſhall be knowne, and better underſtood in the tounge uſed in the realme, and by ſo much every man may the better governe himſelfe without offending the law, and the better defend his poſſeſſions; and in divers countries where the king, his nobles, and others have bin, good governance, and full right is done to every perſon, bicauſe their lawes are learned and uſed in the tounge of the countrey; the king deſiring the good governance and tranquility of his people, and to eſchew the miſchiefs, which may happen by the occaſions aforeſaid, ordeins by aſſent, etc. that all pleas, in all courts, ſhall be pleaded, anſweared, debated and judged in the Engliſh tounge, and that they be entred and inrolled in the Latine.

I ſhall only note heeruppon, that in the MS. booke of the rolles of parlement of this year of 36 E. 3. there is no mention of the inrollement to be in Latine.

Anſwearable to this ſtatute was a paſſage of our king James to both houſes of parlement, in the ſeaventh year of his reign, wherin, ſpeaking of the common law, he ſaith, he wiſhes it were written in the vulgar tounge, and made plaine to the peoples underſtanding, that they might know what to obey, that the lawyers in the lawe, like the Romane prieſts in the goſpell, might not keepe the people in ignorance. Butt (ſaith the hiſtorian) the king was afterwards convinced how daungerous it was to give too much knowledge to the people [r].

[r] Hiſtory of Great Britain, p. 47.

Certain

Certain it is, that the old lawes of our Saxon anceſtors (wherof many are ſtill extant) were written in their owne idiome, and W. 1. commaunded the uſe of his lawes in the Engliſh tounge[a]. I mett with an old wiſe ſtateſman bejond ſea, who ſpake good Latin and French, butt would not att all diſcourſe in French butt in Latin, and for his reaſon ſayd, that all languages butt Latin were ſubject to variation and corruption, that it was the moſt copious, cleer, and noble language, not native to any country, yett uſed moſt generally, that he knew no reaſon, why other nations ſhould honor the French ſo much as to uſe their language. His reaſons for the Latin, perhappes might be conſidered, for the making of our lawes, and putting our pleadings in that tounge.

[a] Ingulphus.

CHAP.

CHAP. XL

Of the day and place aforesaid.

THIS is to be understood, as hath bin noted, the day and place of the meeting of the parlement, not the day and place of the chusing of parlement men, and this is expressed in the writ itselfe, which commonly being read publiquely before the election, is the proclamation therof made by the sherife, in pursuance of this commaund. Of the day of meeting of the parlement, somwhat hath bin noted before, and of the place, wherin I shall now make a little addition. The place where the parlement is to meet is Westminster, wherof Sir Roger Owen saith [a], Westminster heertofore generally, was the throne of the king, the bedde of his justice, and the royalest, and fittest place for distribution of justice, it being a member of London, which accordingly was, and now is, the mother of England, the lady of our province, as it is said of the city of Abel, she was a mother in Israel [b].

This gives me a little liberty to discourse of London, wherof Westminster is by our author stiled a member; and he in another place [c], cites the mention of a councell in the time of king Coenulphus, where London is called the royall or monarchicall citty, above all other citties in this iland, that the royall scepter is in her hand, Westminster being an arme therof, for (saith he) the letters pattents of king H. 1. gave houses in Westminster streete in London. That London ordinarily conteineth the private pallace of his majesty, and his courts of justice. Of this, in the tenth year of H. 2. pope Alexander tooke notice in his epistle to the deane and chapter of London [d], uppon their choice of the bishop of Hereford for their diocesan. In

[a] MS. c. vii. [b] 2 Sam. xx. 19. [c] C. xvi. [d] Radulphus de Diceto.

this reſpect, by Strabo Babilon antiently, and after Seleucia, was the metropolis of Aſſyria, and Ectabane of Media. In Paleſtine to Hadrian, Caeſarea was the metropolis, in Pontus Nico Caeſareo to Juſtinian. In the firmament of our policy, London not being ſo much Caſſiope as the chayre of Aſtrea, or the ſpheare that carryeth about the legall ſtarres, it is to be ſtiled, the firmament of England, as Pindarus for Greece, ſtiles Athens; or the mother of legall diſcipline, as Eunaepius in Julian ſtiles Beritus. I wiſh it may be as the prophet ſpeakes of Jeruſalem, eſtabliſhed, and made a prayſe in the earth [e].

I ſhall aſke leave in this place for a ſmalle digreſſion, touching the name of London, ſo much controverted, and therefore not impertinent to be endeavoured heere to be cleered. Some would have the name of it derived from king Lud, whence it was called Lud's towne, and by pronunciation London. Our antiquaries [f] ſhow the miſtakes heerin, and ſhe hath againe her name derived from the antient metrapolitan city of Sconenland called ſtill, Lunenden, which formerly was of that note, that Eric the 4. king of Denmarke obteined from the pope to have it made an archbiſhoprick, with eccleſiaſtical juriſdiction over Denmarke, Sweden, and Norwey, which before were ſubject to the biſhop of Hambourgh: butt paſſing by it not long ſince, I find not ſo great fame of it att preſent, though heertofore it was ſo eminent, and as ſome affirme, gave the name Lunenden, by pronunciation of time afterwards called, London, to this our great citty. To me, theſe obſervations touching her name ſeeme leſſe probable, than that conjecture, from the Brittiſh word, cllun Dian, or cllun Din. Cllun, in that language, ſignifies a temple, and Dian and Din ſignifying Diana, ſo cllun Dian, and cllun Din, they called it, from the great temple of Diana, which was there;

[e] Iſa. lxii. 7.

[f] Cambden, Verſtegan, etc.—Crantzius.

and it was usuall in those antient times, to name townes from the temples in them, to lett passe the story of Brute, and his consulting the goddesse Diana in his voyage, with her directing him to this island, and his building a temple to that goddesse heere [g]. It is not obscure that Paul's church in London (as appears by the antient deeds of the same church) was antiently the heathen church of Diana, and our chroniclers mention, bones of beasts, and many heads of oxen, which antiently have bin found as they digged there, which, as the prophane writers observe, especially were the sacrifices to Diana [h]. From hence might the antient Britains call it, cllun Dian, and the Welch att this day call it, cllun Din, the temple of Diana, and by contraction and pronunciation varying, it might be soone brought from clun Din to London.

The chiefe officers of this citty are a lord major, two sherifs, who are both judiciall and ministeriall officers, and an alderman of each warde, with their common councell, and their governement resembles that of the kingdome, the lord major their single chiefe magistrate, the aldermen as peers, and the aristocracy of the citty, the common councell, consisting of the deputies of the people elected by them, the democracy of the citty, and by a mixture of these three togither is made up the common councell or parlement of the citty, who have power to make ordinances to bind the cittizens, and to impose taxes in some cases, and have the ordering of all their publique concernements.

Their officers are annuall, and eligible by suffrage of the cittizens, the opinion of the Romans taking place with them. It was their

[g] Galfridus Monumethensis.

[h] MS. Sir Rog. Owen, c. viii.—Stow's Survey of London, p. 367.

pleasure, that their governors should be butt annual, least by continuance of power, they should become the more insolent [i]. Besides their owne governement, it is the usuall and most convenient place, for the courts of justice, and publique councells of the nation to meet and sitt, for the governement of the whole kingdome, and of the king's personall residence; and it seldome hath bin otherwise without prejudice, not only to the citty, butt to the whole realme. Nor is it new to have it so, our stories mention Brute to be the first founder of it, by the name of Troy Novant; that king Lud, the glorious builder of cittyes, repayred it and compassed it, with an innumerable company of towers, and commaunded the cittizens so to build their houses, that in farre remote kingdomes, there was not a citty, which conteined more beautifull pallaces; that he had many cittyes, yett that he loved this citty above all the rest, and made his residence there the greatest part of the yeare [k]. And it was a wise part of this king to keepe his court in this citty. It added much of honor, safety, and contentment to him and his people. His successors followed his example; and the longer it continueth the residence of the prince, the more advantage both prince and people will have by it. Every man in the countrey having his friends and correspondence knowne in the citty, all dispatches thither are certaine, all commodities there to be had, and the way to fetch them; persons constantly imploying themselves thither from the countrey, can with the more conveniency, and att lesse charge dispatch the affayres of themselves and others. Where is, or can be such a mart, for all things of necessity or pleasure? Where are so many worthy ministers, so many generous marchants, to whome not only the

[i] Math. Westminst. p. 34. Placuit, ne imperium diutius quam annum haberent, ne per diuturnitatem potestatis insolentiores redderentur. [k] Galfridus Monumeth. Mat. Westmonast. Gloriosus aedificator urbium. Innumerabilibus turribus. — Hanc prae omnibus amabat, et in illa majori parte totius anni commanebat.

commerce, butt the policy and ſtrength of all the nations of the world are knowne, and have bin ſeen; where ſuch a world of able bodyed men to ſerve their king and countrey? Trade is the ſtaffe of the commonwealth, and this citty is the ſtaffe of trade, the increaſers of ſhipping, and the nurſery of marriners. The lord Littleton, then recorder, when the king made his laſt entry into this citty, on his returne from Scotland, told them, it was his majeſtye's imperiall chamber, and therfore fitteſt to be his laſt reſort, the place where he ſhould moſt ſolemly, and moſt ſecurely, and in the laſt place retire and refreſh himſelfe. It appeares in the Annales of our nation, that they have bin the great ballance in the greateſt affayres, not to be quitted, without daunger of being over-weighed. Butt I muſt aſke the cittye's pardon, to whome I ſhould doe an injury (which is not intended) to take uppon me in this little diſcourſe, to ſett forth her excellencies, which I acknowledge ſo full of deſert and worth, that they require more time, and greater abilities, to give them a due expreſſion.

CHAP.

CHAP. XLI

You cauſe to be elected.

ELECTION is the iſſue of reaſon, diſcent of nature. Therfore among the Romans ſometimes, an adopted ſon, whom they called the ſon of their reaſon and choyce, was preferred before the ſon of their body, the ſon of nature [a], as reaſon is above nature.

Lindwood, our famous Engliſh canoniſt, ſaith, that to elect, is to gather or chooſe one perſon out of many. Another ſaith, that election is the calling of ſome perſon, whom they thinke fitt to a dignity [b], whom they elect to it, as the election commaunded by this writ ought to be. Butt this manner of election of knights, cittizens, and burgeſſes to ſerve in parlement, is affirmed by ſome to be of no antient date, and that the firſt writ of ſummons for them to be elected, is no elder than 49 H. 3. the which opinion (the more to derogate from the honor, power, priviledges and antiquity of the houſe of commons) is ſaid to be grounded uppon the judgement of very worthy and learned antiquaryes [c], whoſe authority is much to be reverenced, that H. 3. after the barons warres ended, did appoint and ordeine, that all theſe earles and barons of the realme, to whom the king himſelfe ſhould vouchſafe to ſend his writ of ſummons, ſhould come to his parlements, and none elſe, except ſuch as ſhould be elected by the voice of the burgeſſes and freemen, by other writs of the king directed to them.

[a] Filium rationis. Filium naturae. [b] F. 123. Eligere eſt ex pluribus perſonis unam legere.—Electio eſt alicujus perſonae idoneae ad dignitatem facta vocatio.

[c] Cambden's Brit. p. 120. & 122.—Dodderidge Antiquit. of parlements, p. 18. 20. 87.—Cotton's Poſthum. p. 346, 347.—Seld. Tit. hon. p. 712. 717.

If

If this be ſo undenyable, as is affirmed, it is a two edged ſword, which att one blow cutts off much of the antiquity, power, and honor of both houſes equally: the lords as well as the commons are wounded by it, and both made to beginne from the ſole ordinance of H. 3. by which there were to be no lords in parlement, butt ſuch only, to whom he ſhould direct his writs perticularly, and no commons art all in parlement before that time elected. I ſhall not diſpute the making of ſuch an ordinance by that king att that time, after his vanquiſhing of the barons; and probably in ſo many ages and revolutions there may have been many alterations of power, and perſonall dignities, and priviledges, and of conſtitutions of governement, both as to lords and commons in our publique councells; butt it will be moſt becomming indifferent men, and Engliſh men, not to derogate from the due and juſt rights, and intereſt, either of king, lords, or commons, in or out of our parlements, butt to afford to every ſtate, which are pillars of our governement and peace, their due cymetry and proportion, which will keepe the whole fabricke of our politique ſtate in the more beauty and firmenes.

To begin with the lords, the chiefe members of our publique councells; it is undoubted, that they have their ſeats and ſuffrages in our parlements, not by election of the people, butt by birthright of primogeniture. Long before 49 H. 3. we had barons and earles by tenure, and ſince that others created by being called to parlement by the king's writ; and ſome (as att this day the moſt of them) created by letters pattents; and being once by any of theſe means barons, they and their eldeſt ſons, and ſons ſons after them, doe injoy the priviledge of being members of the lords houſe in parlement, by right of primogeniture; not as the commons have it, by right of election only. And that this was as antient as any thing of our ſtory, appears by that of Brute, who is ſayd to call to councell the

the firſt borne of the people, and when he went to conſult the goddeſſe Diana, that he tooke with him twelve of the firſt borne[d], who it ſeems were his comites, and were the elder men of the people. So the counſell to Arviragus, to ſubmit to the Romans, was by the firſt borne or elders[e]. And king Ina thus begins his laws. "I Ina king, by conſent of all my aldermen, and eldeſt wiſe men of my people, doe ordeine," etc. Which Bede renders "of all my ſenators, and firſt-borne, wiſeſt of my people[f]." And of the norman king H. 1. it is ſayd, that he aſſembled att London all "the firſt-borne of England[g]" and great men of the land. And the like is frequent in expreſſion of the councells of antient times, as well as thoſe of later: and although probably the Saxons introduced their cuſtome of gavel-kind as to private poſſeſſions, wherin all the ſons had an equal ſhare with the eldeſt, (quaere) yett with them, and with the Swedes and Gothes, to this day, an allowance of addition in fortune was to the firſt borne, and with them the aldermen or eldermen were the great nobles and officers, as the peeres att this day, and preſent in all their publique councells. And this right of primogeniture of our Engliſh lords, appears throughout the whole body of our records and hiſtories, and that as antient and conſtant as any thing of them, and ſo veſted and ſetled by the cuſtomes, and law of the nation, that it is unqueſtionable, that the firſt-borne of every family of an Engliſh peere, is by his birthright a member of the publique councells of the kingdome; and therfore our lawe ſaith of them, that they are "counſellors borne[h];" and whenſoever our kings have held their great councells, conſiſting

[d] Galfr. Monumeth. Majores natu.—Duodecem majores natu. [e] Prin. vindic. p[t] ii. p. 16.—Galfr. Mon. Per majores natu. [f] Mid eallum minum ealbojmannum pam yldertan piban minne peobe.——Leg. Inae, p. 1. Omnium ſenatorum meorum, et natu majorum, ſapientum populi. [g] Simeon Dunelmenſ. de geſt. reg. Angl. col. 225, 226. Majores natu Angliae. [h] Conſiliarii nati.

only

only of the peeres, the chiefe or eldeſt, the firſt-borne of every family of a baron or peere hath bin conſtantly, and in right of their primogeniture, ſummoned therunto; and in caſe they have bin omitted in any ſummons to parlement, they have claimed their right att the houſe of lords, and bin, by judgement of that houſe uppon their birthright, and the title therof only, admitted as members of the houſe of peeres in parlement. This right was inſiſted on by the lords houſe in the time of king James; and there are divers precedents in the records and journals of the lords houſe to the ſame purpoſe. Sometimes the barons called to parlement by writ, had in the writs themſelves the limitation of the dignity to them, and the heirs males of their body. And where it was without any clauſe of limitation of the eſtate, there it is agreed by authors of no meane credit, that the title and dignity of baron goes to the heirs, that is, to the eldeſt ſon, and the diſcent gives alſo the right of being a member of the lords houſe [i].

The firſt creation of a baron by patent, was John Holt of Kiddermiſter; the conſideration was for ſervices done formerly, and for ſervices, which he may doe in our councells and parlements, etc [k]. therfore the king creates him a baron, to him and the heirs of his body, who are to have the ſame priviledges by the patent as to being members of parlement, as their aunceſtor, the firſt created baron had. And therfore conſtantly in the later patents of creation of barons, and other degrees of nobility, this clauſe hath bin inſerted, that he, who is created a baron, and his heirs males, ſhall have, hold, and poſſeſſe a ſeate, place, and vote in parlements, publique councells, and aſſemblies, among the reſt of the barons, as barons of parlement [l].

[i] Coke, Littleton, Selden, Dodderidge, &c.

[k] 11 R. 2. rot. pat. p[t] i. m. 12.—In noſtris conciliis et parliamentis, etc.

[l] Sedem, locum, et vocem in parliamentis, publicis comitiis et conciliis, etc.

And this agrees with that antient recognition in the ſtatute of Clarendon, where among the avitae conſuetudines, this is one, that the barons ought to be preſent att the judgements and councells of the king; and peeres in parlement are often ſtiled primates, and the eldeſt, firſt or chiefe men of the nation.

And this priviledge of primogeniture was not only in the greater barons, butt in the leſſer barons likewiſe, of whom there were reckoned in H. 3. time to the number of 250, who all had the ſame priviledge of primogeniture to come to parlement, the eldeſt of each family of them, as the greater barons had, and were ſummoned by a generall writ to the ſherife, to ſummon all that held of the king in capite; and they injoyed this priviledge of primogeniture; and the firſt-borne of each of thoſe familyes of the leſſer barons did ſitt, and vote in parlement, till about the latter end of king John, or H. 3. time, when this priviledge (which goes farre in the example of it) was taken away, and theruppon it is inferred by ſome, that the electing of members of the houſe of commons did begin. Butt to that I ſhall ſay ſomwhat afterwards.

I ſhall likewiſe note, and acknowledge that reſemblance of this right of primogeniture to the uſage of the Hebrewes[m]. Bertram brings the intereſt and right of primogeniture from Adam, by ſucceſſion of the firſt borne unto Noah: and after the floud, when the poſterity of Noah were diſperſed, he ſaith, that it is moſt probable that every one in his family was prince or ruler, and prieſt; and from thence, he ſaith, thoſe dignities came to the firſt borne of the nation, or family, ſo that the firſt borne of the chiefe family alwayes

[m] De repub. Judaic. p. 28.

obteined

obteined them [n]. To the which our cuſtome of primogeniture to the barons hath no ſmalle relation. To this Selden agrees, and ſumming up the right of prieſthood in the firſt borne, he ſaith, as to their intereſt in publique councells, it ſeemes neceſſary that we conceive, that the eldeſt firſt borne, by his patriarchall dignity, was chiefe in the governement of every aſſembly by himſelfe, and over the reſt in the ſame aſſembly, as well firſt borne, as others. And in another place, he ſaith of civill matters, the firſt borne of tribes of nations, of families of the univerſality of the people, according to the ſeverall differences of aſſemblies, were admitted to thoſe affayres, which were to be diſpatched in the name of the univerſall body of the people [o].

That the governement of the children of Iſrael, before Jacob's going into Aegipt, was ſoly by the father of the family, both in matters of religious rites, and of civill adminiſtration, is generally agreed; and that of the 70 ſouls, which went down with Jacob into Aegipt, the eldeſt of each of the 70 families, which came of them, were the elders and publique councell, which they had in Aegipt, wherof mention is made in the holy ſtory, and by ſeverall authors in that comprehenſion of them [p].

[n] Veriſimile omnino eſt unumquemque in ſua familia principem, ſeu regulum et ſacerdotem fuiſſe.—Has dignitates ad primogenitos gentis ſeu familiae perveniſſe, ita ut primariae familiae primogenitus eas ſemper obtineret. [o] De ſynedr. lib. i. p. 646. Primogenitum natu majorem coetus cujuſque per ſe gubernandi reliquis eam in eodem coetu, tam primogenitis quam aliis ex dignitate patriarchali praefuiſſe, neceſſe videtur ut exiſtimemus.—Eis, quae totius univerſitatis populi nomine obeunda erant tribuum, gentium, familiarum populi univerſitatis, pro vario coetuum diſcrimine primogeniti adhiberentur. [p] Num. xi. 16.—Exod. v. 14, 15, etc.—Bertram. c. v.—Grotius Annot. in Num. xi.

Of the princes of families it is noted by Menochius, that they were the firſt borne of every family [q]; and therfore they were called the princes of families, which the text warrants, where it is ſaid theſe mentioned by their names were princes in their families. Theſe firſt borne were alſo ſtiled, chiefe of the fathers and heads of families [r].

They had their princes, or heads of tribes, and princes or heads of families, which generally were the firſt borne of the tribe, or of the familie: the princes of tribes were heads of families, butt all the heads of families were not princes or heads of tribes [s]; as many families were derived from Reuben, from his ſons Honoch, Pallu, Heſron and Carmi, came the Hanochites, the Palluites, the Heſhronites, and the Carmites; and the like of others. And theſe were called by the names of generations, kindreds, houſes, families, of whom ſome periſhed in the wildernes, and others continued and flouriſhed. And the firſt borne of each of them was chiefe of the fathers, and head of the family, wherof he was eldeſt. Theſe chiefe of fathers, and heads of families, were by the kings called to councell (as our nobles are) and to adminiſter judgement, as about the bringing up of the arke, and other buiſnes of councell and judicature [t]. And theſe ſignified to their families, the king's pleaſure, acted for them in the publique aſſemblies and councells, ruled them, and ledde them forth to warre, as Sigonius, and other authors note; and that this power and priviledge, for the moſt part, was derived to them by the right of primogeniture.

[q] Lib. i. §. 8. Principes familiarum erant primogeniti cujuſcunque familiae.
[r] 1 Chron. iv. 38.—2 Chron. v. 2. [s] Num. xxvi. [t] 2 Chron. v. —Joſ. xxiii. 2. and xxiv. 1, etc.—2 Chron. xix. 8.

I ſhall conclude this matter with the obſervation touching the children of Iſſachar, that they were men of underſtanding of the times, to know what Iſrael ought to doe [u], the heads of them were 200, and all their brethren were att their commaund. And this explaines, who theſe heads of families were, and what kind of perſons they ought to be. He is unworthy of the name and imployment of a noble man and ſenator, that ſhall waſte his pretious time in things, which profit nothing, in vaine paſtimes, ſocieties or worſe debaucheries, wherby they come to underſtand nothing butt trifles, and learne only how to cheate, or be cheated, how to dreſſe themſelves like babies, or how to compaſſe ſome wickednes to the diſtruction of their bodyes and ſoules; whereas they ſhould, after the precedent of theſe firſt borne of Iſſachar, ſtudy and indeavour to have underſtanding of the times, and to know what their nation ought to doe, and then their brethren would willingly be att their command.

This intereſt and right of primogeniture (as in England) ſo univerſally hath bin allowed, and the patterne of the Hebrewes therin followed in moſt nations. The heathens, before and ſince chriſtianity, generally imbraced it. The old Romans came neere it, when the ſons of ſenators, not yett choſen into the ſenate (which admits they uſed to be choſen) were knights, or of the equeſtrian ranke, out of which the ſenators were moſt commonly choſen [w]. This ſeemes to be agreed by the german writer [x], where he ſaith, that antiently, the eſtates were called to the publique councells, and that then the dukes and counts were only temporary dignities; and after the example of the Romans, if they left ſons faithfull to the

[u] 1 Chron. xii. 32. [w] Roſinus de antiquitat. Rom. lib. i. p. 32. Senatorum filii, nondum in ſenatum lecti, equites ſive ex equeſtri ordine fuere. [x] Arumaeus de comitiis. p. 132.

kingdome,

kingdome, and ſitt to undergoe offices; then for the deſerts of their parents, and bicauſe they hoped that they would imitate their parents virtues, their firſt borne did ſucceed in the office [y], and he ſaith, the which is ſeconded by others of their authors, that afterwards, to gaine and preſerve the affections of the nobles, Henry and Otto his ſon made thoſe dignities to be perpetual, and by the patrimoniall right to paſſe unto the ſons and poſterity, with the reſt of the inheritance [z]. And the dukes, marqueſſes, earles, captains, vavaſours, and valvaſins, under theſe appellations in ſucceeding times, togither with the free citties, they were called to the publique councells [a], and with thoſe titles of duke and count in Germany, and other nations, power of governement and juriſdiction have bin uſually given, and diſcended to the eldeſt ſon.

It is ſaid of this right of primogeniture in the german empire, that in ſome families and dutchyes, the firſt borne only doth ſucceede [b]: and he hath all the rights and intereſt, which his father had; and perticularly that of ſitting, and giving of his ſuffrage as a member of their diettes: and that the immediate princes of Germany doe tranſmit their regall dignities, togither with their dominions to their heirs; and bicauſe of this right of primogeniture to be members of their diettes, they are ſtiled counſellors of the empire [c].

[y] Hincmarus, ep. iii. c. 17. Si filios regno fidos, atque muneri obeundo idoneos relinquerent, propter parentum merita, et quod virtutis eorum aemulos ſperarent, primogenitus eorum in officio ſuccedebat. [z] Spandenberg. in Chron. Sax. c. clviii.—Petr. Albin. tit. xi. in Chron. MS. Dignitates eas perpetuas, et jure patrimonii in filios poſteroſque tranſitorias eſſe voluerunt. [a] Ibid. & Lehemannus, lib. iv. c. 1. Subſequentibus temporibus una cum civitatibus liberis ad comitia vocati ſunt.

[b] Nicholaus Mylenus de princip. et ſtat. imper. jurib. p. 231. In quibuſdam familiis et ducatibus ſolus primogenitus ſuccedit. [c] Regales dignitates una cum ditionibus ſuis in haeredes tranſmittunt.—Conſiliarii imperii.

In

In the lower Germany, uppon their defection from the king of Spayne, a priviledge was continued, and remaines att this day to ſome of the antient nobility, who joyned with them, to be in the publique councells. In Spaine, the ſons and heirs, the firſt borne of condes were intituled, viz condes, and after their fathers deceaſe, the dignity and priviledges diſcended to them, and they were called by the king unto his councells.

It is ſaid of the peeres of France, that ſome of them are for the males only by diſcent, and that they are to judge, in the ſupream juſtice of the king, and are to counſell him in affayres of conſequence [d]. All the princes, great lords, and barons of France, who are the eldeſt and chiefe of each family, have bin ſummoned to the aſſembly of eſtates, and uſually by the king to his councells ſince; nor is any countrey more favourable to the right and intereſt of primogeniture, than France.

In Sweden the firſt borne of every family of the nobility hath his ſeate, and voyce in their publique councells, and this priviledge is not only allowed to the eldeſt ſons of earles and barons, butt likewiſe to the firſt borne of every gentleman, as it was heere to our leſſer barons, who were by tenure; butt the gentlemen of Sweden are by pattent under their great ſeale, and no other with them hath the title of gentleman. Of theſe they have about 250 families, erected into that title, as a reward for civill or military ſervice; and the firſt borne of every one of thoſe families, ſo created gentlemen by their honorary lawes, hath the priviledge of being a member of their rickſdagh, or publique councell.

[d] Haillan, f. 232. Sont pour les ſeuls mailes deſcendans. En la juſtice ſouveraign du roy, et le conſeilleres affaires de conſequence.

The

The like priviledge is allowed in Italy, Poland, Scotland, Ireland, and moſt other kingdomes, to the firſt borne of every family of their nobility.

And although the peers of England are not elected by the people, yett they were all att firſt choſen by our kings, and have bin inveſted in that ranke of peerage, either by holding land of the king by the tenure of a barony, or by being ſummoned by the king's writ to be members of the lords houſe in parlement, or by being created lords by the king's letters patents, as hath bin noted. And they are not capable of being elected knights, cittizens, or burgeſſes to ſerve in parlement; for the writ commaunds the ſherife to cauſe knights, cittizens, and burgeſſes, not dukes, earls, or barons to be elected. Wherof more may be noted heerafter, only the caſe of Thomas Camoyes, being a baronet and a baron, was elected knight of the ſhire for Surrey; and the king, by advice of his councell, declared that election to be voyd in law[e].

Butt to revert to the election intended by this writ, I confeſſe myſelfe unable to define the certainty of the time of commencement of ſuch elections. Nor do I eſteeme over much curioſity in ſuch matters to be neceſſary, or a cleerneſs therin poſſibly to be found, eſpecially when ſo many clowds of accidents, alterations, and injuries of time have interpoſed. What occurres to my ſlender obſervation, I only relate hiſtorically, and alwayes write with ſubmiſſion to better judgements.

It is a competent antiquity, allowed by ſome of our authors commoners, who are pleaſed to grant that their deputies in parlement

[e] 7 R. 2 rot. clauſ. m. 32. dorſ.—Seld. Tit. hon. p. 337.—Co. 4 Inſt. p. 47.

have a power of 400 years eſtabliſhment and continuance ſince 49 H. 3. which is 397 years ſince: and to ſeeke no higher might well ſatisfy an indifferent commoner, who would not ſeeke to lay too low (as ſome have done) the intereſt of that honorable houſe, which (as will be noted) is above ſuch iſſues of ſpleene; and that commons, repreſentatives of people, both in England and in moſt other nations, have bin elected, and had a ſhare in publique councells wherin their all is ſo much concerned. And that with us, long before the time of 49 H. 3. and of the Norman invaſion, there were commoners in our publique councells; (butt whether elected in ſuch a manner as now they are, I cannot aſſert, nor men much more learned than myſelfe; eſpecially when ſundry acts of parlement have bin made for alterations of the former wayes of election, and therfore they could not be before thoſe acts made, as they have bin ſince;) butt that there were very antiently elections of ſuch great officers who were members of our parlementary councells, and elections of commoners before 49 H. 3; the firſt is teſtifyed by the lawes of Edward the confeſſor, where he ſaith, that the heretoches were elected by the common councell [f], for the common profit of the kingdome, by all the provinces and countryes, and in every countey in full folkmote; "as the ſherifs alſo of provinces and counties ought to be elected: ſo that in every countey there was alwayes one heretoche choſen, by election, to leade the army of his country, etc [g]." And this Spelman calles a popular election of the heretoches [h] or generalls in the folcmote. And the folcmote (as this law ſaith) was inſtituted by the britiſh king Arthur. And att this popular aſſembly were the ſherifs alſo elected,

[f] C. xxv. Tit. de Heretochiis. Eligebantur per commune concilium.

[g] Sicut et vicecomites provinciarum et comitatuum eligi debent, ita quod in quolibet comitatu ſemper fuit unus heretoch per electionem electus. [h] Verbo Heretoch, popularis electio.

which continued in ſuch election untill 9 E. 2. And that ſherifs were in parlement, (whether as members or attendants is not cleer) in H. 1. time, appears in the ſubſcription of wittneſſes to the charter of lawes made by this king att a parlement att his coronation, " theſe being wittneſſes; the archbiſhops, biſhops, earles, barons, ſherifs, and optimates beſt men of the whole kingdome of England[i]:" where the ſherifs are putt next after the earles and barons, and ranked with them in this parlement to which (as Matthew Paris relates it) all the people were ſummoned[k]; which could not be otherwiſe than by repreſentation of their deputies elected for that purpoſe. As the like expreſſion alſo of Edmerus bears it of the parlement 4 W. 1. where he ſaith, a decree was confirmed by the aſſent of the whole kingdome[l]; which could not be butt by their deputies choſen for that purpoſe. So Cambden mentions, out of the old booke of Abingdon, that there was the king's ſeate; hither the reſort was of the people, when they treated about the chiefe and weighty affayres of the kingdome[m]. Polydor alſo calles the parlement in H. 1. time, the aſſembly of the people: and if any credit be to be given to him, where he mentions the procurators or deputies of the cittizens and of the people[n] in H. 1. time in parlement, it could be no otherwiſe than by election. And Speed[o], from this author and from Gervaſius Dorobernenſis, affirmes that before this king H. 1. time, the kings ſeldome had the joint advice of their people, ſaving only att the beginning of their governement, and in time of warre; which ſhowes, that att thoſe times the peoples advice was had: and he ſaith

[i] Jo. Brampton hiſt. Jornal. MS.—Lib. Rub. Scac. MS. p. 163.—His teſtibus archiepiſcopis, epiſcopis, comitibus, baronibus, vicecomitibus, et optimatibus totius regni Angliae. [k] P. 75 & 321. Populus univerſus. [l] Totius regni aſſenſu.
[m] Hic ſedes regia, huc cum de regni praecipuis et arduis tractaretur negotiis——
[n] Populi conventum.—Polydore Virgil p. 478. Procuratores civium populique.
[o] P. 457. pl xxxv.

 further,

further, that now from the time of H. 1. the ſubject, beſt underſtanding his owne grievances, had both liberty in choyce of their knights and burgeſſes, and alſo free voice to complaine therof in that honorable aſſembly. If this be authentique, the election of knights, cittizens and burgeſſes to ſerve in parlement, muſt be elder than 49 H. 3. A little before this time Matthew Paris mentions a parlement 32 H. 3. whither (ſaith he) beſides a great multitude of barons, knights, nobles, abbots, priors and clerkes, came 9 biſhops etc [p]. If there were then knights in parlement, it is ſome argument that their firſt election to parlement was before 49 H. 3. for this was 32 H. 3. And if we take magna charta [q] itſelfe of the date only of the 9th year of this king, we find there, in conſideration of the king's graunt of the liberties to his people, the archbiſhops, biſhops, abbots, priors, earles, barons, knights etc. gave a fifteenth to the king. And knights being in this parlement, and partyes to this guift of a 15th, it is ſome argument that they were then elected. So is that mention of the famous aſſembly [r], a publique councell held att Weſtminſter in the 25th year of Edward the confeſſor, where were preſent the king, the queen, the archbiſhops with the other biſhops of England, abbots, king's chapleins, earles, ſervants or thaines of the king, and knights: where ſeverall lawes were made. And a ſtatute of R. 2 [s]. mentions knights and burgeſſes comming to parlement, as of old time they were accuſtomed to doe: which alſo argues the election of them in thoſe times. And that they were before 49 H. 3. in his father's time is a clere teſtimony of knights of ſhires, in the cloſe rolle of the 15th year of king John, where we find a writ to the ſherife of Oxon commaunding him, amongſt other

[p] P. 743. pl xlv. an° 1247. Advenerunt illuc excepta baronum, militum, nobiliumr, nec non abbatum, priorum, clericorum, etc. novem epiſcopi, etc. [q] Magna charta, c. xxxvii. [r] Spelman Concil. p. 627. Conventus celeberrimus.

[s] Comitibus, miniſtris (ſeu thanis regiis) et militibus.—5 R. 2. c. iv.

things, to cauſe to come to the king, to conferre with him about the affayres of the kingdome, "four diſcreete knights of his countey[t];" the very words which are uſed in the writ for electing knights, etc. att this day to ſerve in parlement. And in the ſame manner writs were directed to all the ſherifs. And this meeting att Oxford is by Selden ſtiled a kind of parlement, which, he ſaith, king John then ſummoned[u]. Butt of the antiquity of commoners being members of our ſupreame publique councells, and long before 49 H. 3. occaſion will be given to diſcourſe in another place. Yett neither of the certaine commencement therof, or of the election of them, or of the manner of ſuch election wherin many changes have bin made, will it be eaſy to define any thing ſo exactly, butt that it will ſtill remaine lyable to ſome objections. This may be without difficulty aſſerted, that in England there have bin popular elections of great officers, and of members of our parlements, very antient. And therin ſome reſemblance may be noted to the uſages of the Hebrewes, as in that election of our heretoches and ſherifs, and other officers who were judges, to that paſſage in Deuteronomy; "Take ye wiſe men and underſtanding, and known among your tribes, and I will make them rulers over you[w]." The originall which is tranſlated (take ye) doth beare the ſence of (give ye) which implyes an election by the people; and that theſe magiſtrates, who were the rulers of thouſands, of hundreds, of fiftyes, and of tenns, were elected by the people, is the opinion of Menochius; and that they were named and preſcribed to Moſes by the people who beſt knew them[x]. Uppon this text in Deuteronomy Ainſworth ſaith, "Give ye of your own looking out, and choice[y]." So miniſters were lookt out, and preſented by the people. Oleaſter comments uppon the ſame text, "that the prince

[t] 15 Jo. regis rot. clauſ. p[t] ii. m. 7. dorſ. Quatuor diſcretos milites de comitatu hic venire facias ad nos ad loquendum nobiſcum de negotiis regni noſtri. [u] 2 Tit. hon. p. 710. [w] Deut. i. 13. [x] Col. xxxviii. [y] Ainſworth in Deut. i. 13.

ought

ought not to ſett over the people, for their governors, whom he pleaſeth; butt ſuch as the people deſire, and preſent unto him [z]."

That theſe rulers among the Hebrewes, thus elected or given by them, were magiſtrates and members of their publique judicatories and councells, is not diſputed. And beſides theſe elections, we find mention of deputies of the congregation, which our tranſlation reades; "theſe were the renowned of the congregation, princes of the tribes of their fathers, heads of thouſands in Iſrael [a]." The arabick verſion of this text is rendred; "theſe are the moſt named men of the aſſembly, the moſt noble of the tribes of their fathers, heads of thouſands, etc [b]." Butt more expreſſe is the ſamaritan verſion thus rendred; Theſe were deputed by the congregation, princes of tribes, heads of thouſands [c], etc. which ſhowes that they had their deputies, and thoſe appointed by the congregation, which muſt be by the peoples election; and theſe (as hath bin noted) were members of their publique councells: and it will be difficult to find out another expoſition of ſeverall texts of holy ſcripture. Philo ſpeaking of the judges of the Hebrewes ſaith, that the power of judging was given them either by lott, or ſuffrage [d]; which muſt be by election. And of this opinion is Selden, that there was a manner of gathering or chooſing of elders or members of the great ſanhedrim, who I thinke (ſaith he) were ſometimes choſen as well by lott, as by ſuffrage [e]. In moſt countryes they uſed an election, by the people, of their judges and ſenators. The Graecians and Romans practiſed it. In Ger-

[z] Acts i. 15. 23. & vi. 3. 5. 6.—Non debet princeps populo quos voluerit ipſe praeficere, ſed quos populus petierit et obtulerit. [a] Num. i. 16. [b] Iſti ſunt nominatiſſimi coetus, nobiliſſimi tribuum patrum ſuorum, capita millium. [c] Hi fuerunt deputati a congregatione principes tribuum, capita millium, etc. [d] Lib. Περὶ δικασῶν τῶς λαχόντας ἢ χειροτονηθέντας δικάζειν. [e] De ſynedr. lib. ii. c. vi. §. 3. Tam ſorte quam ſuffragiis interdum cooptati ſunt preſbiteri opinor.

many,

many the cittizens chooſe their deputies, to ſerve for them in their generall diettes. In France, when they had the liberty of holding the aſſembly of eſtates, the deputies of the clergy, and of the commonaltie, were elected by ſuffrage of the people, within the reſpective praecincts for which they ſerved: ſo ſaith Paſquier, "they were to elect and depute certain perſons of every order," etc. The like order is mentioned to have bin in Gaule in the time of the Druydes, that then in their diettes or publique councells they had "perſons elected" by them for that ſervice [f]. Att this day in Swethland the proctors of the clergy, the deputies of the burghs and cittyes, and of the boores are elected by the reſpective inhabitants of the ſeverall praecincts, for which they ſerve as members of their rickſdah; and ſo it hath bin with them bejond memory, or mention in their ſtories of the beginning therof: which may be ſome argument of the originall of the like uſage with us, and in ſeverall other kingdomes.

[f] Recherches, p. 82. Qu'ils deputaſſent certains perſonages de chaque ordre.—Ib. p. 7. Gens choiſis.

CHAP.

CHAP. XLII

Freely and indifferently.

ALL elections ought to be made freely and indifferently; none more requires freedom and indifferency than this of members to ſerve for us in parlement, who have putt into their hands the power of our eſtates, of our liberties, of our lives: and therfore it is butt reaſon, that thoſe who are ſo much concerned, in the determinations of the perſons who ſhall be elected, may have a free and indifferent choyce of them. Elections which are not freely, and indifferently made, will be like that of the trees of the wood, who did not chooſe the olive, nor the figge tree, nor the vine, butt elected the bramble for their king; and a fire came out of the bramble, and devoured the cedars of Libanon [a]. So when the ableſt and worthieſt perſons are omitted, and the meaner and leſſe worthy brambles choſen to high imployments; the rights and ſafety both of prince and people will be in daunger to be conſumed.

The law of England takes great care, that the election of members to ſerve in parlement be free and indifferent. Walſingham relates, that 10 R. 2. the king called the ſherifes, juſtices, etc. to Nottingham, where it was propoſed to the ſherifs, that they ſhould not permit any knight of the countey to be choſen to the parlement, butt ſuch as the king and his councell ſhould appoint; unto which the ſherifs anſweared, "that the commons would keepe their old cuſtomes, which will that the knights be elected by the commons [b]."

[a] Petr. Ravius. in epiſt. [b] Ypodigma Neuſtriae, f. 541, p^t x.—Communes velle tenere conſuetudines uſitatas, quae volunt ut à communibus milites eligantur.

And

And it was objected againſt this king in parlement, that although by the ſtatutes and cuſtomes of the kingdome, in the calling of every parlement, the people in every countey ought to be free to chooſe and depute knights to be in the parlement; yett the king, to the end he might the more freely gaine in parlement the effect of his raſh will, did often direct his mandates to the ſherifs, "that they ſhould cauſe to come to the parlement, as knights of the ſhires, certaine perſons named by the king [c]:" wherby things prejudiciall to the kingdome, and burdenſome to the people were ordeined.

In the next king's reigne, att the complaint of the commons, it is enacted, that the people ſhall proceed to the election freely and indifferently; notwithſtanding any requeſt or commaundement to the contrary [d]. In 4 H. 4. the Percies, and other conſpirators againſt the king, framed objections againſt him; amongſt which one was, that no juſtice could be expected att his hand, bicauſe (contrary to the oath which he tooke att his coronation) he had by letters, written and ſent into ſundry ſhires, procured certaine burgeſsſhips for the parlement, all which he beſtowed uppon ſuch as would not fayle to ſerve his turne [e]. In the reigne of his grandchild H. 6 [f]. we are informed of a favourable act, which the abridgement of the parlement rolles doth mention, butt I cannot find it in the record att large. The abridger reports it to this effect, that ſuch members of the commons as were returned by virtue of the king's letters, without any other election, ſhould be good. This (if not miſtaken) is ſome argument indeed againſt free and indifferent elections. Butt that it is greatly miſtaken ſhould ſeeme by the record att large in

[c] 1 H. 4. rot. parl. n. 36. Ut certas perſonas per ipſum regem nominatos ut milites comitatuum venire faciant. [d] Stat. 7. H. 4. c. xv. [e] Martin's Chron. p. 170. [f] 39 H. 6. rot. parl. n. 35.

the

the ſame year[g]. Wherin is recited, " that a parlement att Coventrye was held the yeare before, which was unduely ſummoned; and a great parte of the knights cittizens and burgeſſes for divers ſhires cittyes and burghs, appearing in the ſame, were named, returned and accepted, ſome of them without due and free election, and ſome of them without any election, againſt the courſe of your lawes, and the liberties of your commons of this your realme, by means and labour of the ſayd ſeditious perſons: wheruppon hath inſued many great jeopardies, and inconveniences, full neere to the ruine and univerſall ſubverſion of this your ſayd realme. Pleaſe it your highnes to conſider the premiſſes, and to ordeine, that the parlement att Coventry be voyd, and taken for no parlement; and all acts and ordinances there made be repealed:" which the king graunted[h]. So careful were our aunceſtors to preſerve the freedome of elections, which the king's graunt cannot reſtraine: as where an antient borough, which formerly elected burgeſſes to the parlement, be newly incorporated with a graunt that certaine ſelected burgeſſes ſhall make the election, where before all the burgeſſes did elect; this new graunt taketh not away the right of election of the other burgeſſes[i]. And ſo if a city or borough hath power to make ordinances, they cannot make an ordinance that a leſſe number ſhall elect cittizens or burgeſſes for the parlement than did before; bicauſe free and generall elections of members of that court are favoured by law, being for the publique good: butt by originall graunt where no election was before, or by cuſtome, a ſelected number of burgeſſes may elect, and bind the reſidue. In moſt parlements where I have ſerved thirty years togither, whenſoever any queſtion came about the freedome of elections, I have obſerved the inclination of

[g] 39 H. 6. rot. parl. n. 8. [h] Le roy le voet. [i] Coke 4 Inſtit. p. 48, 49.

the houſe of commons to favour the popular elections, judging the more free and indifferent the election is, the more it is for the freedome and intereſt of the commons; wherof many precedents and judgements are in the journals of that houſe: and before the ſtatute 8 H. 6. which reſtraines elections to be by freeholders of 40 ſhillings per annum only, all the freeholders generally had their votes in thoſe elections; and att this day, in antient cittyes and boroughs, for the moſt part the elections ſtill remaine popular and free by all the inhabitants, except almes men and ſuch like; and ſo it was reſolved in parlement[k] (amongſt many others) in the caſe of Merlow Magna in Buckinghamſhire, to which borough I do owe perticular reſpect and ſervice.

We find ſome reſtraint as to members of the lords houſe, by diſpenſations graunted to ſome peeres, not to attend in parlement: as where the king graunts to James de Audlegh de Helegy, that during life "he be diſcharged from comming to parlement, and councells of the king and his heirs, and to aſſemblies of great men and peeres, att the commaund of the king[l]." And in the creation of the abbot of Taviſtocke, by patent, is the like diſpenſation: and in ſeverall other caſes, as of the lord Beauchampe, the lord Veſcey, and others[m]. Yett ſuch charters are held to be voyd: and that a charter of exemption cannot be graunted to any man, not to be choſen a knight, cittizen or burgeſſe of parlement, bicauſe the election of them ought to be free and indifferent; uppon

[k] 16 Car. 1. [l] 39 E. 3. rot. clauſ. m. 31.—23 E. 3. rot. pat. p[t] i. m. 13.—Quietus ſit de veniendo ad parliamentum et concilia regis et haeredum ſuorum, et ad congregationes magnatum et procerum, ad mandatum regis. [m] 5 H. 8. rot. pat. p[t] ii. m. 22. et 11 E. 3. rot. parl. p[t] i. 1 E. 4. rot. pat. m. 15. 2 E. 4. rot. pat. p[t] ii. m. 2.

which

which ground a charter of exemption that H. 6. gave to the cittizens of Yorke, from being cittizens for the parlement, was declared void [n]. And where any reſtraint or exemption is, the freedome and indifferency of the election is reſtrained, and leſſened; which the law will not permit: in ſo much as if any party in competition, or the freeholders electors doe uppon the election demaund the polle, the ſherife cannot deny it; and though the demaunders of it doe afterward waive it, yett the ſherife muſt proceed in the ſcrutiny; ſo tender of the freedome and indifferency of elections is the law of parlements [o]. And as it permits no exemptions, or reſtraints againſt the freedome of it: ſo it forbids ſollicitations, bribings, or gratifying of ſherifs, head officers or others by any perſon, or giving money or rewards (it were well if it extended to drinke and intertainements) to freeholders or inhabitants to obteine their ſuffrages, or to procure one to be elected; and in ſuch caſes, proofe being made therof in the committee of priviledges, and by them reported to the houſe of commons, a member obteining his election by ſuch undue, and unworthy means, will be throwne out with diſgrace, and the election adjudged voyd; as it was in the caſe of Thomas Long [p], who gave the major of Weſtburg four pownds for his aſſiſtance to gett him to be elected burgeſſe for that towne in parlement, who was theruppon elected. Butt the matter comming to be examined and proved, the houſe of commons adjudged the major to be fined and impriſoned, and Long was putt out of the houſe. In like ſort all force diſturbances and menaces, which interrupt the freedome of elections, are puniſhable: as in the caſe of Sir John Savil, Thomſon ſherife and Henlee alderman of Yorke, for miſdemeanors in the election hindering the indifferency and

[n] Co. 4 Inſt. p. 49.—P. 3. E. 3. f. 19. tit. Coron. 161. ib.—Stat. 29 H. 6. c. iii.
[o] Co. 4 Inſt. p. 48. [p] Journall booke of the houſe of commons, 8 Eliz.

freedome therof, were committed to the ſergeant att armes; and ordered to acknowledge att the barre their offences, and to make a ſubmiſſion in the citty of Yorke [q]. In the ſame parlement Loughton, Trelawney, and Sir William Wraye were committed, and ordered by the houſe of commons to acknowledge their offences att the barre, and att the aſſiſes in the countrey: and their crime was the writing of menacing letters to Sir John Elliot, Coriton, and others of Cornewall, diſturbing their election, and contemning the warrant of the houſe wherby they were ſummoned to attend them. And of this nature ſundry other precedents might be mett with, teſtifying the care, and judgement of our parlements, for the free and indifferent election of their members; wherunto all ſolicitations, canvaſings, bribings, intertainements and courting of people, to gain their voyces, is an adverſary, and of a meane extraction. It was one of the great defects in the Roman ſtate, that they permitted the candidate, ſo called from the white gownes [r] which they wore to be diſtinguiſhed, ſo much and ſo unworthily to ſue for offices [s]; ſo that four things were expected from them: 1. The ſaluting of every cittizen by his name, for the better diſcharge wherof they had a follower [t] who told them the cittizens names as they paſſed by, and this prompter was called Nomenclator [u]; 2. A friendly compellation by the addition of ſome complementall name, as, well mett friend! brother! father! etc; 3. A hott canvaſing or ſolliciting men without intermiſſion; 4. A bountifull or liberall largeſſe, or dole, ſometimes of money other times in providing great feaſts and magnificent ſhowes for the people, who were thus tyed by the teeth or hands, (a baſe obligation!) to give their ſuffrages for him who thus

[q] Parl. Journall booke of houſe of commons, 3 C. 1. Apr. 1628.

[r] Candidati à toga candida. [s] Ambire magiſtratum. [t] Roſin. Antiq. Rom. lib. vii. c. 8. [u] Cicer. Orat. pro L. Mut.

beſpeaketh

beſpeaketh them, and who is commonly the leſſe worthy of imployment the more he ſeekes for it. All deſerve not honor and offices who deſire them; and all who merit them doe not ſeeke for them. It may prove prejudiciall to this kingdome to follow the precedents of the candidati too farre: it cauſed in Rome too much of ambition, faction, promotion of unworthy men; and, in concluſion, thoſe miſeries which their civill diſſentions brought uppon them, common daunger, and perticular oppreſſions.

CHAP.

CHAP. XLIII

By those who shall be present.

ELECTIONS cannot be made butt by the personall presence of the electors: yett suffrages in councells are sometimes admitted to be by proxies. As in the lords house in our parlements, where the peeres have usually deputed some of their fellow members to be their proxies, that is, to have their votes: and which way the proxie in his judgement holds fitt to give his owne suffrage, and his also for whom he is proxie, so many votes are given in that opinion. Butt this is a priviledge and usage peculiar only to the peeres of England, who sitt in their owne right, and (as Coke observes) for themselves only [a]: and so the princes of Germany often send their ambassadors or proxies to their generall diettes, whose actions are of the same force, and as much binding as if they were done by their principalls. Butt in the house of commons no man can make a proxie, bicause they represent others, and are in effect but proxies or deputies themselves: much lesse can those who have votes in the election of knights, cittizens and burgesses for the parlement, depute this right and priviledge to another; butt must be present att the election, and give their suffrage themselves, if they will have the benefit therof allowed to those for whome they give it.

Being all present in the place where the election is to be made, they proceed therin according to the usages, or such agreements as

[a] 3 C. 1. In communi domo parliament. per Coke.

shall

ſhall be concluded on amongſt themſelves touching the manner of the election, which in ſome places is after one way, and in other places after another way; butt in all thoſe wayes the parties acting as to the election muſt be preſent.

Sometime a way of election hath bin uſed by a kind of ſcrutiny, in writing the names of the perſons whom they would have to be choſen in ſeverall papers, and none to know who wrote the paper; butt they who were written moſt often, carried the election.

The way which Moſes uſed in gathering and electing the 70 members of the ſanhedrim, at the firſt inſtitution of it, is thus deſcribed. When God ſayd unto Moſes, "Gather unto me ſeaventy men," etc. Moſes thought with himſelfe, how ſhall I doe this? If I chooſe ſixe out of every tribe, there will be two more than the number commaunded, they will be 72; and if I chooſe five out of every tribe, there will be ten wanting of the number commaunded, there will be butt 60: and if I chooſe five out of one tribe, and ſixe out of another, that will rayſe envy among the tribes. What did he doe then? He choſe ſixe out of every tribe, and made 72 ſchedules; in 70 of them he wrote the word which ſignifies preſbiter or elder, in the other two ſchedules was no inſcription; theſe, mingled togither, were putt into a boxe or urne (as the courſe was uſuall among them): then, all the 72 perſons being preſent, Moſes ſaid to them, come, and every one take his ſchedule; then he that drew a ſchedule with the word preſbiter written in it, to him Moſes ſayd, the Lord hath ſanctifyed thee; and to him that drew a ſchedule without any inſcription, Moſes ſayd, the Lord will not have thee. And thus (ſaith the Gemara)

Gemara) were the 70 members choſen of the Jewiſh ſanhedrim [b]: and this way of ſchedules, as likewiſe other wayes in manner of lotts, were uſed for the election of magiſtrates and of members of publique councells. Sometimes to prevent difference and heate of faction, lotts have bin uſed with us in elections. So they were amongſt the Hebrewes [c].

The ſenators at Athens were choſen by lott; ſo were moſt of their magiſtrates; and ſome by papers in manner of ſchedules, like unto thoſe before noted. Gothofred ſayth of their elections, "that the Athenian magiſtrates were choſen either by lott, or little ſtones," etc. He ſaith that the 50, added to the Prytanes, "were created partly by lott, and partly by election; and that the Graecians, in giving their ſuffrages, did not uſe little ſtones, butt white and blacke beanes [d]:" and the very electors themſelves were choſen by lott (as att this day among the Venetians) by caſting their lotts into an urne. And the ſenate were in like manner elected: whence that of Thucidides [e] is ſaid, the ſenate of 50 were choſen by lotts of the beanes; he to whom the white beanes fell was elected, he to whom the blacke beanes were given was repulſed.

The Venetians make all their elections, paſſe their reſolutions, and chooſe their magiſtrates by a way not unlike to thoſe of lot-

[b] Gemar. Babilon. ad tit. Sanhedr. c. i. f. 17. 1.—Num. xi. 16.—זקן

[c] Sorte cooptati. De ſynedr. lib. ii. c. 6. §. 3.—Philo lib. Περὶ τῦ δικαςῦ.

[d] Gothofredus lib. i. p. 699, Magiſtratus Athenienſium legebantur aut ſorte, vel calculis, etc. P. 700. Partim ſorte partim electione creati fuerunt. Utebantur Graeci in ferendis ſuffragiis non calculis, ſed fabis, iiſque vel albis vel nigris.

[e] Τοὺς λάχοντας τῷ χυάμῳ.

tery, which they call a balleting boxe: and it ſerves to conceale their judgements, and preſerve the freedome and indifferency of their elections [f].

In London, and other places, the manner of their election is by holding up their hands, when he is named whom they would chooſe. Some hold that to allude to it which is in the prophecy of Iſaiah, of putting forth the finger; which the Greeke reades "holding up the hand." The Graecians alſo had that manner of giving their ſuffrages, by holding up their hands, which they called by the ſame word which is uſed in that text of Iſaiah [g].

Butt the moſt uſuall way of election is by the peoples voices, crying up the names of thoſe whom they would have to be elected; and the ſherife or head officer is to judge who hath moſt hands or moſt voices, and determines it accordingly. Some hold this to be a reſemblance to that paſſage where, Saul being elected to be king, all the people ſhouted, and ſayd God ſave the king [h]. And the like of Adoniah. And theſe ſhoutings and acclamations of the people are frequent uppon ſuch occaſions. The Lacedemonians alſo uſed the like manner of elections, giving their ſuffrages not by ſmall ſtones, butt by crye and voice, after the manner of ours [i].

In what manner ſoever the election be made, whither by ſchedules, by lotts, by holding up of hands, or by voices of the perſons

[f] Gothofredus, lib. i. p. 21. [g] Iſa. lviii. 9. Χειροτονίαν. Menochius, lib. 1. col. 51. [h] 1 Sam. x. 34. [i] Cragius, lib. i. De rep. Lacedæmon. c. viii.—Thucidides, lib. i. Βοῇ καὶ ᾠ ψηφῷ.

who are present uppon the place att the time of the election; the high sherife or head officer is the judge who hath most lotts or hands or voices: and if the polle be demaunded by any of the competitors or electors, it ought not to be denyed; butt then uppon examination of every elector's capacity, and setting downe their names, the greatest number of them carryes the election.

CHAP.

CHAP. XLIV

At ſuch proclamation.

OF the proclamation of this election, and of proclamations in generall, ſomwhat hath bin ſayd before, and the leſſe will be now expected. The proclamation heere intended is uſually no other buiſnes butt the ſpeaking aloud of one, who performes the office of cryer in the audience of the people there aſſembled, to charge them to keepe ſilence whileſt the king's writ is reading for the election of knights, cittizens and burgeſſes, to ſerve in parlement for that countey: then the writ is publiquely and audibly read; and after that done the cryer, in the ſherif's name, wiſheth the freeholders there preſent to proceed according to the writ, to the election of knights to ſerve in parlement for that countey; which is done accordingly by the freeholders who are preſent att ſuch election. And none other can legally give their votes to ſuch a choyce, butt thoſe only who are preſent att the proclamation made: ſo that ſome doe hold, if a party of freeholders be brought into the place of election after the proclamation made, and who were not preſent att it, that this exception to their votes being taken att the polling, thoſe freeholders who came thus in after the proclamation ought to be ſett aſide, not being perſons capable by the writ to make the election. And by the ſame reaſon that they may be admitted comming in halfe a day after the proclamation, they may as well be admitted to have their votes comming in to the election ten dayes after the proclamation made, for ſo long in ſome countyes

the poling may be continued; the which would be full of inconvenience both to competitors, and to all the freeholders concerned in that election. Butt theſe periods are more proper for the determination of a committee of priviledges of the houſe of commons, than for any ſingle pen.

CHAP.

CHAP. XLV

According to the forme.

ELECTIONS of knights cittizens and burgeſſes, to ſerve in parlement, are to be made in ſuch a manner as the law directs: they ought to be according, agreeable to the forme, that is, the effect and praeſcript which the lawes commaund.

The Latine word heere uſed, "juxta," which we tranſlate according, doth ſignify "the very ſame" with that which it relates to; as Plautus uſeth it, "thou art of the very ſame opinion with me[a]:" ſo "according to the forme" muſt be the ſame with the forme; juſt as the forme is, ſo muſt the election be. Butt what is meant heere by "forme?" The word hath various ſignifications; ſometimes it is taken for beauty, as in that of Horace relating to Ajax.

> Ajax was moved with the grace
> And beauty of Tecmeſſae's face[b].

It is taken alſo for an idea of a thing conceived in our minds, as a forme of honeſty. A forme is alſo an inſtrument or veſſell wherin a thing is putt: alſo for the ſpecies the rhetoricians uſe it, as in Quintilian, "there are (ſaith he) two formes (that is two kinds) of abdication[c]." The forme of a province ſignifies the limits of it; the forme of a building is the delineation of it. Butt in the uſuall acceptation of the word according to our law expreſſions, when we ſay the forme of a charter we meane the effect of it, the matter con-

[a] Juxta mecum rem tenes. [b] 2 Carm. Forma captivae dominum Tecmeſſae, etc. [c] Lib. vii. c. 5. Abdicationum formae ſunt duae.

teined

teined in the charter, the full and cleere directions of it; ſo when we ſay a thing ſhall be done according to the forme of a ſtatute we intend, that the rules and directions, enacted and praeſcribed by that ſtatute, ſhall be exactly purſued and obeyed in the execution of them.

The ſtatute of Weſtm. 2.[a] gives relieſe in caſes of intayles: the writ theruppon is called a formedon in our law-phraſe, becauſe it is grounded uppon the forme of the guift in tayle, which is to be ſtrictly obſerved.

So the formes, the directions of thoſe ſtatutes which concerne elections, muſt be ſtrictly purſued, and exactly executed by the ſherife: he being, by this writ, commaunded to cauſe the election to be "according to the forme" of the ſtatutes; of which ſtatutes we ſhall take a view in the next chapter.

[a] Cap. i.

CHAP.

CHAP. XLVI

Of the ſtatutes therof.

STATUTES are acts of our parlements, the lawes made by the king with the aſſent of his lords and commons in parlement aſſembled [a]. And "the ſtatutes therof," that is, concerning the election of knights cittizens and burgeſſes to ſerve in parlement, are divers, according to which the ſherife and other miniſters of lawe are to proceed in theſe elections. The firſt of this nature, which I meet with, was the petition of the commons, 50 E. 3. that a parlement may be holden every year [b]; the knights of the parlement may be choſen by the whole counties; and that the ſheriff may likewiſe be without brocage in court. To this the king anſwears to the parlement, there are ſtatutes made therfore; to the ſheriffs, there is anſwear made; to the knights it is agreed, that they ſhall be choſen by common conſent of every countey.

Shortly after, in his grandchild's reigne [c], a ſtatute was made, that all perſons and commonalties, that ſhall have ſummons of the parlement, ſhall come as they be bound to doe, and have bin accuſtomed of old times; and if any lord, knight, cittizen or burges abſent himſelfe, and come not att the ſommons (except he may reaſonably and honeſtly excuſe him to our lord the king) he ſhall be amerced and otherwiſe puniſhed, according as of old times hath bin uſed to be done; and if any ſherif be negligent in making his returnes of

[a] Co. on Litt. f. 11 & 126.

[b] 50 E. 3. rot. parl. n. 177.

[c] 5 R. 2. c. 4.

writs

writs of the parlement, or leave out of the returnes any citties or burroughs which be bound and of old times were wont to come to the parlement, he ſhall be amerced or otherwiſe puniſhed as was accuſtomed in the ſayd caſe in times paſt.

In 1 H. 4. it was one of the objections againſt king R. 2. that he procured knights of the ſhires to be made to ſerve his own will [d].

8 H. 4. the commons exhibit articles to the king, which the lords of the councell were ſworne to obſerve; one was, that all the ſherifs, before the election of knights of the ſhire ſhall, by open proclamation in their countyes, appoint fifteene dayes reſpite, the day and place [e].

In the ſame year, butt in the printed booke of ſtatutes it is in the year before, this act is made [f]. "Att the grievous complaint of his commons, in parlement, of the undue election of the knights of countyes for the parlement, which be ſometime made of affection of ſheriffs and otherwiſe againſt the forme of the writs, to the great ſlaunder of the counties, and hinderance of the buiſnes of the commonaltie in the ſaid countey; the king willing to provide remedy, by aſſent of the lords and commons, hath ordeined that the elections of ſuch knights ſhall be thus made: att the next countey [court], to be holden after the delivery of the writ, proclamation ſhall be thus made in the full countey of the day and place of the parlement; and all thoſe preſent ſhall attend to the election, which ſhall be freely and indifferently, notwithſtanding any requeſt or commaundement to the contrary." Then the act appoints the indenture, the

[d] 1 H. 4. rot. parl. n. 37. [e] 8 H. 4. rot. parl. n. 83. [f] 7 H. 4. c. xv.

tacking of it to the writ for the returne, and the clauſe for certifying it into the chancery.

This act is recited in the ſtatute 11 H. 4. and that no penalty was therin ordeined uppon ſherifs if they make returnes contrary therunto: this ſtatute ordeins, that the juſtices aſſigned to take aſſiſes ſhall have power to inquire, in their ſeſſions of aſſize, of ſuch retornes made; and if it be found by inqueſt and due examination before them, that a ſherife hath made any returne contrary to that act, the ſherif ſhall incurre the penalty of 100l. to the king; and the knights ſo unduely returned ſhall looſe their wages.

The ſtatute 1 H. 5[h]. confirmes the former ſtatutes of election, adjoyning, that the knights be not choſen unleſſe they be reſiant within the ſhire, where they ſhall be choſen, the day of the date of the writ of ſummons; and that the knights, and eſquires, and other which ſhall be chooſen of the ſaid knights of the ſhires, be alſo reſiant within the ſame ſhires; and that the cittizens and burgeſſes be choſen men, cittizens and burgeſſes reſiant, dwelling and free in the ſame cifties and boroughs, and no other in any wiſe.

A ſtatute made 6 H. 6[i]. recites the ſtatute of 7 H. 4. and the ſtatute of 11 H. 4. which this ſtatute of 6 H. 6. ſaith was miſchievous to the ſherifs and knights which be forebarred, and putt out of their anſwear; and ordeins that the ſherifs, and the knights then elected or who ſhall be thenceforth elected, ſhall have their anſwear and traverſe againſt ſuch inqueſts and offices, before any juſtices to be taken; and the ſaid knights and ſherifs ſhall not be

[h] 1 H. 5. c. i. [i] 6 H. 6. c. iv.

indamaged againſt the king or his ſucceſſors by any ſuch inqueſt, till they be duely convict by the forme of the law.

Another ſtatute was made 8 H. 6[k]. reciting, " that wheras the election of knights of ſhires to come to the parlement, in many counties have now of late been made by very great, outragious, and exceſſive number of people dwelling within the ſame counties, of the which moſt part was of people of ſmalle ſubſtance or of no value, wherof every of them pretended to a voice equivalent, as to ſuch elections to be made, with the moſt worthy knights and eſquires dwelling in the ſame counties; wherof manſlaughter, riots, batteries, and diviſions among the gentlemen and other people of the ſame counties, ſhall very likely riſe and be, unles due remedy be provided. The king ordeins, by authority of the parlement, that the knights of ſhires ſhall be choſen by people reſiant in the ſame counties, wherof every one ſhall have land or tenement to the value of forty ſhillings by the year, att the leaſt, above all charges; and that they who ſhall be choſen ſhall be dwelling and reſiant within the ſame counties; and ſuch as have the greateſt number of them that may expend forty ſhillings by year, and above, ſhall be returned, by the ſherifs, knights for parlement, by indenture ſealed betwixt the ſayd ſherifs and the ſayd chooſen: and every ſherif ſhall have power to examine, uppon the evangeliſts, every ſuch chooſer, how much he may expend by the yeare; and if any ſherife returne knights contrary to the ſaid ordinance, the juſtices of aſſiſe ſhall have power therof to inquire, and if by inqueſt the ſame be found, and the ſherife therof be duely attainted, he ſhall incurre the peine of 100l. to the king, and impriſonment by a yeare without baile;

[k] 8 H. 6. c. vii.—Par trop graunde et exceſſive nombre des gentz, etc. So the French original in the edition of 1763. Vol. i. p. 544. (M)

and

and the knights returned contrary to the ſayd ordinance ſhall looſe their wages. Provided, that he which cannot expend 40 s. by year, ſhall in no wiſe be choſen of the knights for the parlement; and that in every writ, that heerafter ſhall goe forth to chooſe knights, mention be made of the ſayd ordinances."

In 10 H. 6 [l]. the ſtatute of 8 H. 6. is recited, and explained att the requeſt of the commons, that the chooſers of knights ſhall be dwelling and reſiant in the ſame countey, and to have freehold to the value of 40 s. by the year att the leaſt, above all charges, within the ſame countey where any ſuch chuſer will meddle of any ſuch election.

In 18 H. 6 [m]. which is not printed, the ſherif of Cambridge having made no returne for the knights of that countey, the parlement ordered, that he ſhould goe to a new election, and make proclamation, that no perſon ſhould come armed therunto: a good note to be generally obſerved on the like occaſions.

In the 23 year of this king [n], a long ſtatute is printed, reciting the act of 1 H. 5. c. i. and that of 8 H. 6. c. vii. and "that of late divers ſherifs, for their ſingular availe and lucre, have not made due elections of knights, nor in convenient time, nor good and true returnes, and ſometimes no returns of knights, citizens and burgeſſes lawfully choſen; butt have returned ſuch as were never duely choſen, and other cittizens and burgeſſes, than thoſe which by the majors and baylifs were returned to the ſaid ſherifs; and ſometimes the ſherifs have not returned the writs, but imbeſilled them; and made no praecept, for election of cittizens and burgeſſes; and for want of penalty againſt the ſherifs, mayors and bailiffs, for the party

[l] 10 H. 6. c. ii. [m] 18 H. 6. rot. parl. n. 19.—Ne ount faitz—Ne bons et verroiez retournez. Vid. ubi ſupra, p. 613. (M) [n] 23 H. 6. c. xv.

grieved: it is ordeined, that the former ſtatutes be kept in all points; and that every ſherif, after the delivery of the writ to him, ſhall make and deliver ſufficient praecepts to the majors and baylifs, to chuſe cittizens and burgeſſes in that countey where they are to be choſen, which ſhall be returned to the ſherifs, by indentures, which the ſherifs ſhall returne: and if they doe contrary to this, or any other ſtatute for elections, for every time, they ſhall incur the paine conteined in the ſtatute 8 H. 6. and moreover to every perſon choſen, and not returned, 100l. if he, or any other in his default will ſue for it, by action of dett, with coſts againſt the ſherife his executors or adminiſtrators: and in the ſame manner, for an undue returne of a cittizen or burges, the major or baylifs ſhall forfeit 40l. to the king, and 40l. more to the party choſen and not returned, and to any who in his default will ſue for it, by action of debt as before. And every ſherif that makes not due election of knights, in full countey, between the hours of 8 and 11 before noone, and that maketh not true returne of ſuch elections, ſhall forfeit 100l. to the king, and 100l. to him that will ſue for it by action of debt as before. Every party choſen, and not duely returned, ſhall begin his action within three moneths after the parlement commenced, or elſe another may ſue: and if any perſon be returned by the ſherif, and after be putt out and another putt in his place, he ſo putt in ſhall forfeit 100l. to the king, if he take uppon him to ſitt, and 100l. to the party putt out if he ſue for it, by action of debt, etc. within three moneths after the parlement commenced; or, in his default, to any other that will ſue for it. So that the knights of the ſhires for the parlement, heerafter to be choſen, ſhall be notable knights of the ſame counties for the which they ſhall be choſen; or otherwiſe ſuch notable eſquires gentlemen borne, of the ſame counties, as ſhall be able to be knights; and no man to be ſuch knight, which ſtandeth in the degree of a yeoman and under.

Uppon

Uppon this ſtatute ſome actions have bin brought, and reſolutions given by our judges: as in Bulkley's caſe, that this ſtatute extends to elections in Wales; and in ſome other caſes, in our bookes of reports [o].

In 35 H. 8. it is enacted [p], that in the 12 ſhires in Wales, and in Monmouthſhire, the burgeſſes of every of the citties, burroughs and townes, which be contributory to the payment of the wages of the burgeſſes for the ſhire townes, ſhall be lawfully admoniſhed by proclamation, or otherwiſe, by the head officers of the ſaid townes, to come and give their voices for the election of the burgeſſes of the ſhire townes; and ſhall have like voice and authority to elect burgeſſes of the ſhire townes, in like manner as the burgeſſes of the ſaid ſhire towns have or uſe.

There be ſeverall other ſtatutes relating to the wages of knights, cittizens and burgeſſes for the parlement, and to their priviledges; butt not being neceſſary for the ſherif's notice as to the buiſnes of the election, which is that intended by the writ when it expreſſeth "according to the ſtatutes therof," thoſe ſtatutes only pertinent therunto are heere noted; and others, as unneceſſary for this occaſion, are omitted.

[o] Dyer f. 113. 168.—Plowden's Com. f. 118. [p] 35 H. 8. c. 11.

CHAP.

CHAP. XLVII

Made and provided.

THE chancellor Forteſcue thus deſcribes how ſtatutes (which he calls conſtitutions) are made and provided. He ſaith that cuſtomes and the ſentences of the law of nature, after that they were once putt in writing, and by the ſufficient authority of the prince publiſhed, and commaunded to be kept, were changed into the nature of conſtitutions or ſtatutes; and did after that, more penally than before, bind the ſubjects of the prince to the keeping of them by the ſeverity of his commaundement; and of this ſort (he ſaith) are the moſt part of the civill lawes, which are called the ſtatutes of the emperors [a], and properly, the Latine word ſtatutum being rendred, a thing certainly determined, a decree, as the lawes of the emperors were: and with this agrees Coke's derivation of the making of ſtatutes, that is, making of decrees [b]. And Lindwood holds, that "the making of ſtatutes implyes perpetuity [c];" it remaines a decree unalterable, butt by the ſame power that made it: and in another place he ſaith, that the written lawe, ſtatute, and cuſtome are equall [d].

Our lawe's oracle, Littleton, taketh a ſtatute or act of parlement to be ſignifyed by the word ordinance; and in the making of moſt ſtatutes it is ſayd, "Be it ordeined [e]." The making of ſtatutes is by the king, with the aſſent of the lords and commons, in parlement,

[a] De laudib. leg. Angl. f. 36.—Statut. imperatorum.
[b] Co. on Litt. f, 126.
[c] F. 21. dorſ. E. Statuimus perpetuitatem ſignificat.
[d] F. 36. dorſ. R.
[e] §. 234. Co. on Litt. f. 159. b.

and

and hath the force of a law. In the ſame ſence, of a written lawe, it is taken in the holy ſcripture; as, "the ſtatutes which he wrote for you," that is, which he made for you, you ſhall obſerve to doe [f].

In ſome ſpeciall notes of my honoured father, I find this diſtinction of our lawe made by him. Our lawes (ſaith he) are all of two ſorts. 1. Lawe poſitive, and this is the common lawe of the kingdome, and is an unwritten lawe; for it is a cuſtomary lawe, which was never commaunded or inforced, butt meerly cuſtomary introduced from the manners of men [g], and hath no record or hiſtory of the beginning of it, nor by nature can it have; for if there were any knowledge of the beginning of it, it could not be cuſtomary. This law is now in part "reduced into writing [h]," by often judgements given by it, which are thoſe we call the year bookes; butt it is evident, the law was ſo before, and thoſe judgements were given according to that lawe: and this reporting of thoſe cuſtomes, or not written lawe, altereth not the nature of that lawe, nor maketh them to be written lawes where before they were unwritten lawes; for in ſome writs brought now grounded uppon the antient common lawe of the kingdome, notwithſtanding there are many judgements of record and have bin for many hundred years in the point, and thoſe reſolutions by the judges of the lawe in thoſe points reported long ſince in writing in the reports of our yeare bookes, yett the writ is, "Wheras according to the common cuſtome of our kingdome of England;" ſo that the reports and the records of judgements in thoſe caſes, although they be "written teſtimonies of the lawe [i]," yett

[f] 2 Kings xvii. 37. [g] Jus Angliae poſitivum, praeceptivum—Lex non ſcripta, jus conſuetudinarium ex moribus hominum introductum, mere conſuetudinarium. [h] In ſcriptum redactum. [i] 34 H. 8. Br. Cuſtomes 59. Cum ſecundum legem et conſuetudinem regni noſtri Angliae, etc.—2 H. 4.—Teſtimonia ſcripta legis.

they doe not alter the nature of thoſe lawes, to make them written lawes where before they were cuſtomary, butt they continue unwritten lawes ſtill; and ſo hath our poſitive or common law bin from all antiquity, wherof Caeſar maketh mention. Speaking of the Druydes, the great lawyers and judges in Brittaine and in Gaule in that time, he ſaith, " that their lawes and judgements they held not lawfull to commit to writing: and that ſeemes to me for two cauſes to have bin inſtituted, that neither their learning ſhould be knowne to the vulgar; nor thoſe who are learners, truſting to writing, ſhould the leſſe confide in their memories [k]." Thus it appears, by Caeſar's owne teſtimony, to have bin in his time. And theſe lawes poſitive now uſed in England are the antient home borne native lawes [l] of this iſland; and are for the moſt of them the ſame that they were att the firſt being of any commonweale in this iſland, and have bin little or nothing altered by the incurſions of conquerors, and the often change of the ſtate and policy; butt ſo ſoon as there was a civill ſociety heere, and a commonwealth, the lawes were heere alſo, for they were " the very cementing therof [m];" and it is therfore a commonwealth, bicauſe the people conſent to one law and government: butt heerof there may be occaſion to diſcourſe more largely heerafter. Doubtles this poſitive common lawe is not a lawe made and provided, not a written lawe, as our ſtatutes are. And antiently the ſtudents of this lawe, under the reverend ſages of it, were like the ſchollars of the Druydes, they had no matter of writing to help them: for untill reports began to be made, wherof there were almoſt none till E. 3. time, there was nothing for them to reade except ſome few records; and that which is now, though it have bin in

[k] Caeſar. Comment. lib. v. De Bello Gall. Neque fas eſſe exiſtimant ea litteris mandare, etc. Id mihi duabus cauſis inſtituiſſe videntur, quòd neque in vulgus diſciplinam efferri velint, neque eos qui diſcunt litteris confiſos minùs memoriae ſtudere.

[l] Leges indigenae. [m] Ipſa compago reipublicae.

latter times much increaſed, is butt a few volumes, and not the hundredth part of that which is in other profeſſions, eſpecially the civill and canon lawes.

It is true, that ſince the reigne of our king H. 7. the parlements have made and provided many more and larger ſtatutes than were by their aunceſtors, who uſed not to make many lawes, and thoſe which they did make were commonly in ſhort and cleer expreſſions; ſo that ſometimes many ſtatutes, if not all the lawes made in the whole reigne of a king, tooke not up ſo many leaves as one ſtatute in H. 8. or queen Elizabeth's time: ſo that now the volume of our ſtatutes is growne or ſwelled to a great bignes. I remember the opinion of a wiſe and learned ſtateſman and lawyer [n], that multiplicity of written lawes doe butt diſtract the judges, and render the law leſſe certaine; that where the lawe ſetts due and cleere bounds betwixt the praerogative royall and the rights of the people, and gives remedy in private cauſes, there needes no more lawes to be increaſed, for therby litigation will be increaſed likewiſe. It were a worke worthy of a parlement (and cannot be done otherwiſe) to cauſe a review of all our ſtatutes, to repeale ſuch as they ſhall judge inconvenient to remaine in force; to confirme thoſe which they ſhall thinke fitt to ſtand; and thoſe ſeverall ſtatutes which are confuſed, ſome repugnant to others, many touching the ſame matter, to be reduced into certainty, all of one ſubject into one ſtatute; that perſpicuity and cleernes may appear in our written lawes, which att this day few ſtudents or ſages can find in them.

For the antiquity of written lawes in this iſland we have many teſtimonies. In the epiſtle to the third report [o] I find this opinion,

[n] Old Chr Oxenſtierne. [o] Co. epiſt. 3 Rep.

"that the lawes of the antient Brittains, their contracts and other inſtruments, and the records and judiciall proceedings of their judges, were wrote and ſentenced in the Greeke tounge is plaine and evident, by proofes luculent and uncontrowlable." He mentions the names of Brittannia from the Greeke words ſignifying a painted countrey, and Albion from the Greeke word Olbion, ſignifying a happy iſland; with many Engliſh words, as chyrographer, prothonotary, ideote, etc. yett taſting of a Greeke beginning: that Mulmucius Dunuallo [p], 441 years before Chriſt, did write two bookes of the lawes of the Brittons, the one called ſtatuta municipalia, the other leges judiciariae, in the Brittiſh tounge, as they ſignify in that language; and is as much as to ſay the ſtatute law and the common lawe. Queen Mercia wrote a booke of the lawes in the Brittiſh tounge, called merchenlege. Hoel Dha, that is, the good prince of Wales, in the year after Chriſt 914, in a frequent aſſembly of his ſtates abrogated the antient ordinances, and eſtabliſhed, made and provided new lawes for his ſubjects [q].

Butt to ſpeake ſomewhat of the time of the Romans heere, Caeſar himſelfe teſtifyes, that the Druides for the diſpatching and deciding of cauſes, as well publique as private, uſed the Greeke letters; and that the diſcipline of the Druides found in Brittaine was from thence tranſlated into Gaule [r]. Which Pliny alſo witneſſeth. Butt, when the Romans became conquerors of Brittaine, ſome object, that their lawes, which were ſtatutes and edicts of the emperours, their written lawes were heere eſtabliſhed, and the poſitive lawes of this iſland chaunged. Which opinion I cannot ſubmit unto, for theſe

[p] Polychronicon, lib. i. [q] Leg. Hoel Dha Proem. Cambd. Brit. p. 650.

[r] Caeſar de bell. Gall. lib. vi. Graecis utuntur literis.—Diſciplina Druidûm in Britannia reperta, atque inde in Galliam tranſlata.

reaſons

reaſons and arguments, which, in my humble judgement, ſeeme to evidence the contrary. Julius Caeſar could hardly be ſtiled a conqueror of Brittaine; and Dion relates, that he did not change the lawes of the Brittains. Nor doth it appear, that Claudius altered them [s]. It is certaine, that from the coming of Caeſar untill Domitian's time, which is about 150 years, the Romans now and then vexed the Brittains with warre, butt never reduced them to a province till Domitian's time; and what lawes the Brittains then had will be a queſtion, for diſcuſſing of which it will be fitt to conſider how farre the Romans did urge their lawes uppon the provincialls, which was not all alike in all provinces [t]: for where the countries were civill and wealthy, they did more endeavour to reduce them to their lawe and governement, than where they were barbarous, as they accounted this; they intended their profit what they could, butt for civill governement, they deſired noe further to have to doe in it, than for the keeping of the people under their yoake. The power of their provinciall praeſes or chiefe governor was twofold: in imperio, which was the mannaging of the warre; and in poteſtate, which conſiſted of two parts, juriſdiction and curation. Juriſdiction was the adminiſtration of juſtice; curation was the proviſion and care they were to take in the buiſnes of corne, of tributes, taxes and the like [u]. If the lawes were altered, it was in that part of his power by which he tooke cogniſance of cauſes, his juriſdiction, and in that they had butt three wayes: either they had new lawes appointed by the ſentence legatorum [w], which were commiſſioners choſen out of purpoſe to treate of that buiſnes; or there were ſpeciall lawes made for the province att home; or elſe the proconſul did pro-

[s] Dion. lib. xiii.—Camb. Brit. f. 41. [t] Roſinus de antiquit. Rom. lib. vii. c. 42. [u] In imperio; in poteſtate facultas cognoſcendi juriſdictio, Curatio in re frumentaria, tributaria, vectigali, et vicaria. [w] Ex legatorum ſententia.

pound edicts in writing in the provinces [x]. Butt that there were any of the former two courſes uſed in Brittaine is not likely, becauſe no hiſtory, either ours or theirs, ſpeaketh of it; and what was done in the laſt courſe may probably be, that the preſident might propoſe ſuch lawes heere, as ſhould keepe the people in obedience, and drawe their wealth from them: butt to eſtabliſh any ſett forme of lawe, it is probable they never did it, for if they had, it ſhould have bin the civill written lawe of the Romans, which a little after that time began to flouriſh more than it had done before; and if that lawe had bin eſtabliſhed heere, it had bin impoſſible it ſhould have bin ſo quite extirped and rooted out of the realme againe that no ſteppes or prints of it ſhould have remained, as there doth not in our politie. For our lawe is much more free, and ſavours of monarchy and ariſtocracy in its owne nature; and doth conſtitute a mixt, not abſolute governement [y], (as the author notes). Butt the civill law is for abſolute and arbitrary power, as it is notably diſcourſed by Forteſcue to his prince; and our lawe being ſo ſtrange from the rule and practice of the civill lawe of the Romans, it is not probable that their written lawes ſhould be heere eſtabliſhed. The Romane governement continued ſo ſlacke in this iſland, that in Antoninus time, in the year of Chriſt 156, or, as others ſay, 180, they had a king called Lucius [z] who received the chriſtian faith: and he probably att this time began the eſtabliſhment of lawes, ſuch as before were not indigenae and in uſe, butt new made ſtatutes; for by the publique profeſſion of chriſtian religion, there came in civility, care of right and juſtice. And this appeareth by the ambaſſage that Lucius ſent to Rome, not only for the faith of the goſpell, butt alſo to have from him a copy of the Roman imperiall lawes to governe the

[x] Plebiſcita ſenatus conſulta.—Edicta proponere in provinciis in ſcriptis.

[y] Conſtituere imperium mixtum non merum. [z] Sleidan. f. 66. Lucius Aurelius Verus imperabat cum Antonino.

people

people by: to which petition of the king and nobles of the kingdom of Brittaine (queſtionleſſe then mett together in a publique councell) pope Eleutherius, to whom it was ſent, made this anſweare [a].

"You have requeſted from us, that the lawes of Rome and Caeſar might be ſent over, which you deſire to uſe in the realme of Brittaine. The Roman and civill lawes we may alwayes reject, butt the lawe of God, in no wiſe. You have received of late, through God's mercy in the realme of Brittaine, the lawe and faith of Chriſt; you have with you in the realme both teſtaments: out of them by God's grace, by the counſell of your realme, take a lawe, and by it, through the patience of God, governe your people of Brittaine."

By this may be gathered, that Lucius did not only intend the ſetling of religion in the kingdome, butt alſo of a ſtate politique; and that he found defects of lawes, and therfore ſent for the Roman lawes, then famous over all our part of the world [b]; and that the Roman lawes had not bin planted heere when the iſland was made a province, which was butt in Domitian's time, who dyed about 40 years before Antoninus beganne his reigne in whoſe time Lucius lived. And if the Roman lawes had bin heere before, Lucius needed not to have ſent to Rome for them: butt the holy father forbad the Roman lawes, and injoyned thoſe of the teſtaments: and uppon this reſcript it is very likely, (and a learned judge [c] ſaith I am cleere of opinion) Lucius and his ſtate did accordingly conſulte and conſider to ſupply, and take lawes out of Moſes lawe; for it is very

[a] Fox, p. 68. 96.—Stow, p. 36.—Spelman. Concil.—Parſons de trib. converſ. p[t] i. c. 4. f. 77.—Baron. Ann. eccl. a 183. Ad petitionem regis et procerum regni Britanniae, etc. [b] Sleid. de 4 imper. f. 66. Tempore Antonini Pii florent jureconſulti. [c] J. W. in ſuis annot. MS. (Probably the author's father. M.)

apparent (as may be more perticularly ſhewed elſewhere) that many of our poſitive and written lawes, are grounded uppon Moſes lawe. And att this time (he ſuppoſeth) was the moſt generall and certaine ground layd both of our poſitive and written lawes, that continue yett, for the perfecting of the ſtate now growen civill and monarchicall. And yett it is not to be doubted, butt that ſome antient and originall lawes were then ſuffered to continue ſuch as they were in Caeſar's time, the Druides continuing till king Lucius time, when they were converted by Eluanus the Britiſh biſhop [d]: and it ſeemeth impoſſible ſo to change the ſtate of a commonwealth, that no part of the lawe cuſtomes or uſages of it ſhould remaine, if there remaine any of the cittizens of it. This epiſtle is cited by ſome [e], of Lucius to Eleutherius, and by Parſons affirmed to be fained †; butt I ſee no ſufficient ground for that confutation. It is ſayd alſo that the governement of Brittaine was altered in Conſtantine in his time, butt that was only for the names of officers from a preſident or proconſull, to praefectus praetor Gall. and vicarius Brit. heere under him.

The judgement of Sir Roger Owen [f] concerning the imperial civill law is, that the learning of that written lawe, in reſpect of our common lawe, is private, fitter for univerſities than cittyes, fuller of contemplations than experience, more commendable in the ſtudents themſelves than profitable to others; that before the Roman monarchy it was very incertaine; yett both then and ſince, a learning and profeſſion deſerving honor and countenance, butt not admitted att any time to be a lawe of force in this iſland. And ſpeaking of the great paines of doctor Cowell, in his booke of reducing the

[d] Stow ſurvey, f. 152.—Holingſh. lib. iv. hiſt. Angl. c. xix. p. 52. [e] Jewel verſus Harding, f. 119. † F. 18. [f] Sir Roger Owen's MS. c. ii.

common

common lawe to the civill lawe, and to the civilians methode, he ſaith; the doctor hath taken great paines, in fine, to be delivered of nothing. Such is the labour of thoſe, who would aſſume an affirmation, that the imperiall Roman lawe was att any time in uſe and force as the lawe of England.

The ſtatute 25 H. 8. is expreſſe, that the cannon lawe hath no place in England, if it be contrary to the common law. The like is to be affirmed of the civill lawe, both with us and in forein ſtates: it is acceptable under the requeſt of primary and politique reaſon, not diſagreeable from the cuſtomes of the ſtate.

It appears by Roger Bacon the fryer, that king Stephen forbad the uſe of the lawes of Italy: and by the cloſe rolles of 19 H. 3. commaund is given to the major and ſherifs of London, to forbid ſchoole-maſters and ſchollers to reade the civill or cannon lawes there.

By a manuſcript chronicler, who lived in H. 2. time, it is related, that when two lawyers were ſent into England from the king of France, who would prove ſome proceedings in parlement to be erroneous; to which purpoſe they alledged the bookes of the feuds, and the law of nations: the lords in parlement anſweared, "that this land is not governed by your written lawes, butt by lawes and cuſtomes uſed by our antient kings; in which if any ſhall be found defective, or inconvenient, only by common aſſent in parlement the kings of this realme are to redreſſe them."

In H. 3. time [z], all the earles and barons denyed the biſhops requeſt, that thoſe borne afore matrimony ſhould be legitimate,

[z] 20 H. 3. c. ix.

bicauſe

bicauſe the church accepted them ſo; the lords ſaying, " they would not change the lawes of England [h]." More plainly the whole parlement in 11 R. 2. ſayd, " the civill lawe is not, nor was not, nor never ſhall be uſed within this iſland."

In king James his ſpeech to both houſes of parlement, he ſaith, the civill lawe is like the Latine tounge, an antient and learned tounge indeede wherby ſchollers may parley: butt it is not the mother or radicall tounge of any people of the world; notwithſtanding the doctors Ridley, Cowell, Coſens and other civilians challenge all the chriſtian world, butt England, to be within their horizon. Certainely the imperiall Roman written law was of little uſe, and a ſtranger in this nation; not received or allowed heere butt in ſome perticular proceedings of the chancery, and ſome other courts, after the formes of that lawe; which is alſo now and then vouched by learned perſons, in their arguments uppon caſes of our common lawes: not to ſway the judgement, or as authorities, butt as ornaments to the diſcourſe of pleaders; meeting ſometimes with the reaſon of our lawe, butt never over-ruling any point in lawe. The profeſſors of that lawe, and the profeſſion itſelfe (wherin my father had the honor to be a graduate) require deſerved honor; and are of uſe on many occaſions, perticularly uppon forein treaties and negotiations.

By the holy ſtory it is evident, that God's people had no written lawe, before their comming out of Aegipt, till the lawe in the tables was given them from mount Sinai. Before that time the lawe was declared to them by the patriarkes and fathers of families, holy men of God, according to the dictates of the ſpirit of God to them.

[h] Nolumus leges Angliae mutare.

And

And ſo it was with Moſes, who gives this account of it to his father-in-lawe Jethroe: "when they have a matter they come unto me, and I judge between one and another, and I doe make them know the ſtatutes of God, and his lawes [i]. Of this proceeding there are many inſtances in the bookes of Moſes. The Chaldee renders the text of Exodus xviii. "the people come to me ſeeking learning from God." The Septuagint is, "ſeeking judgement from God," that is (ſaith St. Auguſtin) from the eternall lawe of God, which was before all written lawe; which Moſes, being full of the holy ſpirit, did more cleerly diſcerne than all the reſt of the Hebrewes, and in all things aſked counſell, by his thoughts, meditation and prayer [k]. Butt notwithſtanding Moſes were thus inabled and inſpired, yett God was pleaſed to give certaine rules of written lawe unto his people by the hand of Moſes, as he ſaith, "write thou theſe words;" and afterwards it is ſayd, "he wrote uppon the tables the words of the covenant, the ten commandements." Theſe lawes were explained by Moſes and his ſucceſſors unto the people, as it is ſayd in the ſame chapter. "And Moſes called unto them, and Aaron: and all the rulers of the congregation returned unto him, and Moſes talked with them; and afterwards all the children of Iſrael came nigh; and he gave them in commandement all that the Lord had ſpoken with him in mount Sinai [l]." Heere appears the orall law or unwritten lawe: and the ſtatutes or written lawes.

The judges, who are the elders or ſages of the lawe of England, are the expounders of our unwritten lawes, and of our ſtatutes or written lawes; their expoſitions or judgements are delivered over to

[i] Exod. xviii. 16.

[k] Queſt. 67.—Cornelius à Lapide in hunc textum Exod. xviii. 16.

[l] Exod. xxxiv. 27, 28.—Ver. 31, 32.

their ſucceſſors, and made in publique in the audience of the people; and there ſeemes to be ſome reſemblance heerin to the expoſition of the lawes of God, by Moſes and his ſucceſſors, which is thus deſcribed by the talmudes and rabbins. When Moſes had learned the law from the great Almighty God, Aaron came in to the auditorie of Moſes, where Moſes expounded what was to be expounded to him: Aaron returned from his place, and ſate on the left hand of Moſes. Then came in the ſons of Aaron, to whom Moſes expounded what was to be expounded to them: they went from their places, and ſate, Eleazer att the right hand of Moſes, and Ithamar att the left hand of Aaron. Then came in the elders or preſbiters, and Moſes likewiſe expounded what was to be expounded to them: they going away, the whole body of the people came in, to whome againe Moſes expounded what was to be expounded to them. Moſes departed, and Aaron expounded; Aaron departing, his ſons expounded; and they going away, the elders expounded to the people [m]. This they tearmed the chaine like tradition or delivering over of the orall lawe, wherof Maimonides ſaith thus: "All the praecepts which were given to Moſes in Sinai, are given with their explanations according to that which is ſaid, I will give the tables of ſtone, and a lawe and commaundement which I have written, that thou maiſt teach them." This lawe (ſaith the rabbi) is a written lawe, and the command denotes the explication of it: whence we are required to performe the lawe according to the ſentence of the commaundement; and this commaundement is that which we call the orall lawe [n]. Butt the text is, "commaundements which I have written;" and with our tranſlation agrees the greeke and ſeverall other verſions. And it is plaine, that they had both an orall,

[m] Gemar. Babilon. ad tit. Erubin. c. v. f. 54. 2. Unde etiam Sal. Jarch. ad Exod. xxxiv. 32.—Gloſſa Talmudica.—Rabbi Jehuda. [n] שלשלה הקבלה Praef. ad tit. Talmudic. Zeraim. et ad Jad. Chazaka.—Exod. xxiv. 12.

and

and a written lawe: the verſion of the Spaniſh Jewes is expreſſe to that effect; and heerwith hyperbolically agrees R. Simeo. Ben Lakiſh, and divers other of the Jewiſh authors, that this orall lawe was taught by Moſes to Aaron, and to his ſons, and to Joſhua, and to the 70 elders of the ſanhedrim; that Joſhua, who was Moſes diſciple, delivered it over to his ſucceſſors, princes of the ſanhedrim, and the elders delivered it to their ſucceſſors; and ſo from one to another, till after the diſtruction of the temple [o]. For their written or ſtatute lawes, the ſame appeare in the bookes of Moſes, wherof that of Deuteronomy chiefly hath its name; and Moſes is ſayd to have written thirteene bookes of the lawe with his owne hand, one wherof he gave to each of the twelve tribes, and the thirteenth booke was layd up in the arke, according to that text; "take this booke of the lawe, and putt it in the ſide of the arke of the covenant, of the Lord your God, that it may be there a wittnes againſt thee [p]."

As with the Hebrewes, and with us in England, ſo in moſt nations they had both an orall or unwritten lawe, and ſtatutes or written lawes likewiſe, and after the manner of that which is deſcribed in the governement of the Gothes and Swedes; therfore I ſhall not need to be more perticular than in the recitall therof.

[o] Τὰς ἐντολὰς ἃς ἔγραψα.—Gemar. Babilon. ad tit. Beracoth. c. i. f. 5. 1.—Y la ley y la encommendanſa que eſcrivi para a moſtrarlos.—Tract. Talmud. Pirke Aboth. Rabbi Nathan Babilon. Maimonides Moſes Mikotzi. Abraham Zacuthius in Sepher Juchaſim. R. Gedaliah in Shalſeleth Hacabala. Joſua Levita in Hilcoth Olam. David Ganz in Tzemath David, etc.

[p] Δεύτερος νόμος. — In praefat. ad Seder Zeraim, et ad Jad Chazaka. — Deut. xxxi. 26.

Of this people it is ſaid, that in the firſt ages they uſed no other lawes butt thoſe which nature and honeſty had ingraven[q]; and indeed the lawe of nature, written in the hearts of all people, was the firſt and originall lawe by the which men were governed: he ſaith, that the will of their kings was taken for law, who governed all things as it were by their hand; and he cites that paſſage of Tacitus att that time, with theſe "did good manners more avayle, than elſewhere good lawes[r]." With this agrees the obſervation of their learned author, whom I well knew, Loccennius; that in the beginning of the commonwealth of Swedes and Gothes, as amongſt other nations "ſo heere the publique governement was exerciſed by no other lawes, or manners, butt what were divinely written in the hearts of men[s]." He alſo agrees in this, that afterwards the will of the king was inſtead of law; and whatever he did commaund in reaſon, that was law and ratifyed, according to that Swediſh proverbe, the king's word is valuable. "Thoſe of their lawes (ſaith Wexionius) which carryed the beſt reaſon were not ſo much committed to writing, as to memory; like as amongſt the Lacedemonians. Our firſt aunceſtors (ſaith he) had neither their fundamentall, nor other lawes compriſed in writing[t]."

Afterwards (ſaith our author) the mindes of men being naturally depraved by vice; and kings, as men, ſubject to erre; it was requiſite to have written lawes, certaine and conſtant, by whoſe rule

[q] Wexionius, lib. v. c. 6. Nullis utebatur legibus, niſi quas natura et honeſtas ſculpſerat. [r] Pluſque tùm apud hoſce valuerunt boni mores, quam alibi bonae leges. [s] Loccennius, p. 54. Ita hic nullis, niſi cordibus hominum divinitus inſcriptis, legibus, et moribus pub. imperium agitabatur. [t] Dein arbitrium regis pro lege erat.—Cum ratione juſſerat, id jus ratumque fuiſſe.—Dyrt er Drottens ord.—C. viii. Non tam literis quam memoriae, veluti et apud Lacedemonios, commendabantur.—C. vii. Ut nullas alias, ita nec fundamentales ſcriptis comprehenſas leges habuerint.

the

the governement ſhould be adminiſtred: that where the law is bad, or (which is all one) uncertaine, there alſo other things are uncertaine and doubtfull whoſe rule the lawe ought to be; as Tully ſaith, all things are uncertaine when the law is departed from, nor can it availe what that will be for the future "which is placed in the will, if I may not ſay in the luſt of another[u];" therfore certaine rules and written lawes are commended. Before the uſe of paper and parchement was found out yett had the Gothes written lawes, that is, cutt and inſcribed in tables of wood; as the lawe of mount Sinai was written in tables of ſtone. The lawes of Weſtro-Gothland are recorded to be firſt propoſed by one Lumberus, and were therfore called Lumbi leges: he was a pagan. The ſeverall lawes of other provinces being diverſe conſtitutions, ſpeciall lawes, and municipall rights diſperſed into ſeverall volumes, like our merchenlage, Weſt Saxon-lage, and Dane-lage. Chriſtopher king of the Swedes, Gothes, Danes and Norwegians, etc. like our king Edward the confeſſor, out of that variety permitted to be compiled the common lawe, in one law-booke which we uſe att this day[w]. This I have ſeene: and all their common lawes, and the decrees and acts of their publique councells (which are very few) are att this day written, and made uſe of by reading the judgement out of the lawe booke, which is for the moſt part now printed and uſed in the reſpective judicatories.

The imperiall Roman lawes never reached this countrey; nor were they ever ſubject to the eagle, butt clipt her winges, as the brittiſh Brennus and Belinus did, when they ſubjugated Rome herſelfe.

[u] Lib. ix. fam. epiſt. 16. Quod poſitum eſt in alterius voluntate, ne dicam libidine.
[w] Lib. v. c. 8. Ex iſta varietate jus commune in unum legiſterium, quo hodieque utimur, compilari permiſit.

Butt

Butt this Roman law was not liked in thoſe countreys where the Romans had dominion. Guy de Coquel, advocate generall to the duke of Navarre, thankes God, that in France they are not governed by the civill lawe: we are happy (ſaith he) that our lawes are ſhorte and ſubſtantiall, not ſubject to ſuch anxiety and uncertainty as is in the Roman law. England hath more cauſe for this gratitude, their lawes being much ſhorter, and more ſubſtantiall than thoſe of France. Wheras of the civill law it is ſaid, that if all the bookes therof ſhould be heaped togither, they would be higher than the tower of Babel [x]. And therfore Eraſmus ſaith, "except a man be madde, he will never wiſh the policy of the Romans, or the imperiall governement to be in his countrey." In Spayne the civill lawe hath no place, butt only as it is naturall reaſon [y]. Among the Switzers to cite the Roman law was capitall [z]. In Fraunce the conſtitutions of the emperors are forbidden to be alleadged contrary to the cuſtomes of the place; and it was enacted, that the French ſhall not be ſubject to the Roman lawes: and Servinius obſerves the miſeries that would befall France, if they were governed by the civill lawes.

The popes themſelves forbad the Roman lawes to be taught; as is remembred by Baldus and other civilians [a].

Butt I ſhall not need to labour any further in this matter: my humble obſervation is, and I do not find, that in any nation of Europe, the Roman imperiall written law is received or uſed, as the law of the nation; though the ſame be tearmed the law of nations.

[x] Gentianus Farvettus. [y] Didacus Perez. Ordin. Caſtell. [z] Choppinus.—Code Henry. Charondas. Edict. Phil. regis, ann° 1287.—Phil. 4. an° 1304.
[a] Honorius 3. Eleutherius.

Butt it is in eſteeme (as it deſerves) and vouched where the municipall law failes, as a direction for their judgements; and in this way both with us, and more in other countryes the profeſſion and profeſſors of it, and the law itſelfe hath ſome force and countenance.

Butt I muſt leave the Roman ſtatutes or written lawes, to proceed to my next ſtep, touching the ſtatutes or written lawes made and provided by our Saxon aunceſtors, many of which are yett extant in their owne idiome. King Alfred or Alured of the Weſt Saxons (as Coke affirmes) wrote a booke about 872 years after Chriſt, and called it "a certaine breviary which he compoſed out of divers laws of the Trojans, Graecians, Brittaines, Saxons and Danes [b]." In the year 635 Sigebert, king of the Eaſt-Angles, wrote a booke of the lawes of England, called "the inſtitutions of the lawes [c]." King Edward, before the conqueſt the third, "out of the vaſt heape of lawes which the Brittaines, Romans, Engliſh and Danes had made, choſe out the beſt, and compiled them togither in one which he would have to be called the common lawe [d];" as appears by the ſeverall hiſtorians who write of thoſe times.

Of W. 1. whom they call the conqueror, it is written, that after he had ſubdued this iſland, to prevent offences "he decreed to bring the people ſubjected to him under a written lawe;" and out of the Marchen leg, Dane leg and Weſt Saxon leg, ſome he rejected, approved others, and added of the lawes of the Normans "ſuch as were

[b] Co. ep. 3. Rep. Breviarium quoddam quod compoſuit ex diverſis legibus Trojanorum, Graecorum, Britannorum, Saxonum et Dacorum. [c] Legum inſtituta.
[d] Ex immenſa legum congerie quas Britanni, Romani, Angli, et Daci condiderunt, optima quaeque ſelegit, ac in unam coegit quam vocari voluit communem legem.

moſt

moſt effectuall for preſerving the quiet of his kingdome[e]:" Hoveden relates it, " by the counſell of his barons[f].". The booke of Litchfield ſaith, that W. 1. "cauſed to be ſummoned, through all the conſulates of England, the nobles, and wiſe men, and learned in the law of England, that he might heare from them their owne lawes and cuſtomes[g]:" and twelve were returned out of every countey, who ſhowed what the cuſtomes of the kingdome were, which for the moſt part were confirmed in that aſſembly, with the aſſent of the barons; as the Roman lawes were by the 12 men, compiled out of the Graecian lawes and cuſtomes of the country[h]. H. 1. reſtored to the Engliſh " the lawe of St. Edward, with ſuch amendements as my father amended them by the counſell of his barons[i]." King H. 2. wrote a booke of the common lawes and ſtatutes of England, entituling the one part " the lawes for the commonwealth," the other " the royall ſtatutes;" wherof nothing now remaines[k]. From theſe relations and paſſages of ſtory, butt chiefly from their owne fancies, ſome have found out reproaches and calumnies to caſt uppon their owne birthright, the native lawes of their owne countrey; blemiſhing them as patched, and made up out of the decrees and ſtatutes of conquerors of ſeverall other nations. It little becomes Engliſhmen to affirme this, although there ſhould be probability for ſuch a ſcandall; butt it leſſe becomes them, or any rationall indifferent perſon, to vent theſe libells, when there is not the leaſt ſhadow or colour of trueth in them.

[e] Gervaſius Tilſberienſis. Decrevit ſubjectum ſibi populum juri ſcripto.—Quae ad regni pacem tuendam efficaciſſima videbantur adjecit. [f] P. 343. Ed. lond. Concilio baronum ſuorum. [g] MS. et not. ad Eadmerum. p. 171. Fecit ſummoneri, per univerſos conſulatus Angliae, Anglos nobiles, et ſapientes, et ſua lege eruditos, ut eorum et jura et conſuetudines ab ipſis audiret. [h] Inſtit. tit. 2. §. Sine ſcripto. [i] Mat. Paris, p. 75. Ed. lond. Lagam regis Edwardi vobis reddo cum illis emendationibus etc. [k] Co. ep. 3 Rep. Pro republica leges. — Statuta regalia.

If

If the judgement of the learned chancellor Forteſcue[l] may have as much credit as the aſpertions of theſe men, we ſhall be ſatisfied, that in the times of the ſeverall nations, Brittaines, Romans, Saxons, Danes, Normans, and their kings who had dominion heere, this realme was ſtill ruled with the ſelfe ſame cuſtomes that it is now governed withall: which if they had not bin right good, "ſome of thoſe kings moved either with juſtice, reaſon, or affection, would have changed them, or elſe altogither aboliſhed them[m]," and eſpecially the Romans who did judge all the reſt of the world by their owne lawes; likewiſe would other of the foreſaid kings have done which, by the ſword only poſſeſſing the realme of England, might by the like power and authority have extinguiſhed the lawes therof.

That the Romans did not change our lawes, and impoſe their owne imperiall ſtatutes on the Brittains, hath bin before noted. And although the Romans had their colonies heere, as Malden in Eſſex, called by them Camalodunum, Yorke, as an inſcription in an old piece of money of Severus teſtifies, and att Cheſter called by them Deua and Deuana from the river Dee, and witt-neſſed by the inſcription of an old coine of Septimius Geta, and att Bathe, as appears by an inſcription in a fragment of a ſtone in the walles of it, touching Glouceſter which was called Gleve, and was a Roman colony[n], and ſome thinke the like of Colcheſter; and every colony was butt an image of the mother citty, with like holy rites, like courts, lawes, temples, places

[l] De laudib. leg. Angl. lib. i. c. 17. [m] Aliqui regum illorum, juſtitia, ratione, vel affectione concitati, eas mutaſſent, aut omninò deleviſſent.

[n] Camalodunum—Col. Eboracum. Leg. VI. Victrix.—Col. Diuana, Leg. XX. Victrix.—DEC. COLONIÆ GLEV. VIXIT ANN. LXXXVI.

of publique commerce, and for the moſt part with duumviri in lieu of conſulls, and aediles and decuriones in lieu of a ſenate; and Tacitus notes, that the Brittains affected the roman language, rhetoricke, "roman habit, roman pleaſures, diet, and the like which ſome (ſaith he) called civility, when it was a part of ſervitude[o];" and the poor Brittaines being ſubdued muſt ſubmit to the lawes of the victors: yett we find in no ſtory the footſtepps of a change of the law, and governement heere. And if ſome alterations probably were made, for the better keeping under of the Brittains in their ſubjection; yett even of thoſe, hardly any tokens are now remaining.

The next who made incurſions into this kingdome were the Picts, who (as is probably conjectured) were the northerne Brittains: and though they did infeſt the ſoutherne partes, and middeſt of the kingdome; yett they never ſettled themſelves ſo as to make any alteration of lawes and politie, butt were driven out againe, and waſted by the Scots.

The Scoti did much infeſt the northerne parts of the iſland, and thoſe parts only, never entring much ſoutherly; butt they never obteined any kingdome or ſettled dominion heere, ſo as to change any of our lawes or politie[p].

The Saxons invading this iſland could not bring our lawes with them, for they were not the lawes of thoſe countryes from

[o] In vita Agricolae. Habitus noſtri honor, et frequens toga, balnea, et conviviorum elegantia; idque apud imperitos humanitas vocabatur, cum pars ſervitutis eſſet.

[p] Scoti tantum infeſtarunt in partibus ſeptentrionalibus, nunquam obtinuerunt regnum aliquod.

whence

whence the Saxons came; neither were they deviſed heere by them, being pagans, and our lawes ſavouring altogither of Chriſtian religion; and if they had deviſed them, there would be ſome hiſtory, or record or teſtimony of it. Butt (as the traditions of the church obſerve) the Saxons finding heere lands, woods, waters, and lawes, continued the uſe of them all for themſelves, and their own good; and did not apply themſelves (nor were very fitt or apt for it) to the deviſing and framing of a new ſtate and politie: nor could ſuch civill lawes as ours come out of ſuch uncivill and barbarous heads as thoſe were; they being pagans and barbarous, and our lawes moſt chriſtian-like and civill. And though they drave out many of the Brittains (butt not all) and were lords of the land, and had a heptarchy heere; yett I doe not ſee how they could utterly extirpate the fundamentall lawes of the nation: yett I doe believe that they did urge ſome new ones of their owne, ſuch as tended to the eſtabliſhment of themſelves and their conqueſt. And that which they called in their collection the merchenlage and weſtſaxonlage, with their ſtatutes, were many of them the lawes of Brittaine in king Lucius his time [9].

The Danes did infeſt this kingdome 200 years, butt had the intire dominion heere only 20 years, by Swain, Canutus, Harold, and Hardi Cnute; during which time there was no alteration of our lawes, butt in ſome few perticulars, chiefly tending to the ſettlement of their owne peace and conqueſt. The law danelege was ſo called from them, the authors of it: and Matthew Weſtminſter relates, that under king Cnute "in a publique councell att Oxford, both by conſent of the Engliſh and Danes, all agreed to obſerve the lawes of king Eadward the firſt.

[9] Lib. de antiquis Britanniae legibus.

Wheruppon thoſe lawes, by commaund of king Cnute, being tranſlated out of the engliſh tounge into latine, and for the equity of them, by the aforeſaid king were commaunded to be obſerved as well in Denmarke, as in England[r]." Theſe were not new lawes, butt the lawes of E. 1. and yett agreed uppon, and commaunded to be obſerved in Denmarke as well as England. And theſe lawes of E. 1. were by him collected out of former lawes of this iſland.

What was done by W. 1. and his Normans, touching the alteration of our lawes, hath bin before in parte noted: and wheras Gervaſe of Tilſbery, and ſome others, report that the Normans did reject the greateſt part of our lawes, and brought in the cuſtomes of Normandy; it had been much more conſonant to the trueth of hiſtory, if they had affirmed, that the cuſtomes of England were carryed over into Normandy, and there eſtabliſhed; as hath bin before noted, and is evident by their owne acknowledgement. Which of our lawes they did abrogate no man did ever yett diſcover, neither can it be proved by any likelyhood: for our lawes doe differ as much from the old lawes of Normandy, as of any countrye in the world; and it is ſtrange that the Normans ſhould bring ſuch lawes hither, and leave none of them behind in their owne countrey. Where Gervaſe of Tilſbery ſaith, that W. 1. added of the lawes of Normandy to our lawes, he ſaith they were ſuch as were for the peace and ſafety of his kingdome; and ſuch lawes as he in writing allowed are, by a denomination from the greater parte, called the "good and approved lawes of the kingdome[s]." Matthew Paris

[r] P. 404. an° 1022. Angli et Dani, in colloquio apud Oxoniam celebrato, de legibus regis Eadwardi primi tenendis concordes effecti ſunt. Unde eiſdem legibus, jubente rege Cnutone, ab Anglica lingua in Latinam tranſlatis, tam in Dania quam in Anglia propter earum aequitatem à rege praefato obſervari jubentur.

[s] Not. in Forteſcue, p. 8. Bonae et adprobatae antiquae regni leges.

calles them, after the addition of W. 1. lawes, yett ſtill " the lawes of king Edward, which formerly were invented and conſtituted in the time of Edgar his grandfather [t]." Roger of Hoveden calles them " the lawes of the moſt righteous king Edward [u]." And Ingulphus abbot of Crowland, who lived under the conquerour, brought a coppy of them from London to his abbey, as he remembers in his printed ſtorie, and calles them as Hoveden doth " the lawes of the moſt righteous king Edward: the which (ſaith he) my moſt excellent lord king William did proclaime to be authentique and perpetuall, and uppon the moſt grievous paines to be inviolably kept through all the kingdome of England; and commended them to his juſtices, in the ſame language wherin they were made [w]." And in a manuſcript copy in Sir Thomas Cotton's librarie, continued by Peter of Blois after that which is in print, ſucceed thoſe lawes of W. 1. there ſpoken of, with this title in broken french, thus engliſhed. " Theſe are lawes and the cuſtomes which the king William graunted to all the people of England, after the conqueſt of the land; theſe are the ſame which the king Edward his couſin held before him. That is to ſay, peace to the holy church, etc [x]." They were thus called St. Edward's lawes, and to this day are: butt I cannot deny butt that ſome Norman cuſtomes might be mixt with them, and to this day continue. As ſucceeding ages, ſo new nations (comming in by a conqueſt thought mixt with a title, as of the Nor-

[t] MS. vit. Fred. abbati S^ti Alb. Leges Edwardi regis quo prius inventae ſunt et conſtituti in tempore Adgari, avi ſui. [u] Leges aequiſſimi regis Edwardi.

[w] Ingulphus, p. 914. Leges aequiſſimi regis Edwardi, quas dominus meus inclitus rex Wilhelmus authenticas eſſe et perpetuas, per totum regnum Angliae inviolabiliter tenendas, ſub poenis graviſſimis proclamarat, et ſuis juſticiariis commendarat, eodem idiomate quo editae ſunt. [x] Ces ſont leis et les cuſtumes qui li reys William grantaſt à tut le puple de Engleterre, apres la conqueſt de la terre ice, les meiſmes que le reys Edward ſun coſin tint devant lui. Ceo eſt a ſauoir, pais à ſaint eggliſe, etc.

man

man conqueror) bring commonly ſome alteration: by this well conſidered, that of the lawes of this realme being never changed will be better underſtood. The whole body of the civill politie and lawes was not changed; many of the lawes were continued through all the changes of the ſtate and governors. Yett rationally and probably it may be concluded, that the originall of our laws and ſtatutes was made and provided by Lucius the firſt brittiſh king, and founded uppon the holy ſcriptures, divers of them continuing to this day yett in our lawes and ſtatutes. In ſo many ages and changes of ſtate, it were hard to deny butt that there have bin alſo ſome mixtures and alterations: as the Saxons made a mixture of the Brittiſh cuſtomes with ſome of their owne; the Danes, with old Brittiſh, the Saxon, and their owne; and the Normans, the like.

And for the antiquity of our lawes, to lett paſſe the ſtory of Brute, more is to be had from the antienter and true origination of the Brittons, which is from Japhet and his poſterity; and that the Brittiſh iſles, with all the weſt, were given by Noah's laſt teſtament to Japhet: and if he and his poſterity poſſeſt theſe parts of Europe (as they did) their governement was not without laws[y]. And as the notes uppon Forteſcue ſay[z], in trueth, and to ſpeake without perverſe affectation, all lawes in generall are originally equally antient, all were grounded uppon nature; and no nation was, that out of it tooke not their grounds: and nature being the ſame in all, the beginning of all lawes muſt be the ſame. Divers nations, as divers men, have their divers collections and inferences; and ſo make their diverſe laws to grow to what they are, out of one and the ſame roote. Many of our preſent laws were not thought on 500 years ſince, and then were many that 500 years before had no being, and leſſe time forward alwayes produced divers new; the beginning of all heere

[y] Cambden's Britannia.—Greeke Scaligeran chron. of Euſebius. [z] P. 17.

being

being in the firſt peopling of the land when men, by nature being civill creatures, grew to plant a common ſociety. This rationally conſidered might end that obvious queſtion of thoſe, who would ſay ſomething againſt the laws of England if they could. 'Tis their triviall demaund, When and how began your common lawes? Queſtionleſſe its fitteſt anſweared by affirming, when and in like kind as the lawes of all other ſtates: that is, when there was firſt a ſtate in that land which the common law now governes, then were naturall lawes limited, for the convenience of civill ſociety heere; and thoſe limitations have bin from thence increaſed, altered, and interpreted, and brought to what now they are. And ſurely more of the moſt antient lawes and ſtatutes, made and provided by our aunceſtors in this iſland, doe ſtill continue in force with us, than can be parallelled in moſt other nations of Europe; wherof ſomwhat is noted in other places.

The praeceptive or ſtatute laws of England, which are the written laws, are of two ſorts, declaratorie of the old law, or introductorie of new[a]: thoſe which are declaratorie of the old lawe are ſuch as confirme parts of the unwritten, cuſtomary, poſitive laws of the land, which were in uſe before, and oppoſed by conquerors and their ſucceſſors bicauſe they were for the liberty of the ſubject; and being in ſome ſort exiled for a while after conqueſt, yett ſticking ſtill in mens minds eſpecially of the nobilitie, were by force obteined to be declared law by the ſtatute of magna charta; which were the laws collected by Edward the confeſſor, and by this charter became written lawes, bicauſe they were of new publiſhed by the common councell of the kingdome[b].

[a] Declaratoria antiqui juris, introductoria novi.

[b] De novo promulgatae per commune concilium regni.

Our

Our cuſtomes could not be introduced by conquerors, for then they would have bin promulgated in writing; butt there is no writing, record, or hiſtory of the beginning of them: butt ſuch lawes as were altered or inforced by conquerors were reduced into record, and writing, wherof we have ſeverall ſtatutes which are introductive of new lawes. Butt I have launched too farre in this wide ocean: it is time to make to ſhore, leſt I be foundered; and to beg pardon for my confuſed and tedious notes on this ſubject, all which are ſubmitted to better judgements.

CHAP.

CHAP. XLVIII

Two knights.

THE word knight is with us moſt commonly reſtrained to an honorary title, and is the next in ranke to a baron; butt (as moſt other words that make the titles of honor) hath bin of divers ſignifications: ſometimes it denoted the ſexe, or as much as male, as a ᵵin pinᵵep cnẏhᵵ a man child of ten years of age; ſo dienſt knecht is a man ſervant to this day with the Dutch. And properly both in high and low Dutch land, the word cnihᵵ and and cnẏhᵵ ſignified a ſervant or attendant. Thence Chriſt's diſciples are termed, in the Saxon evangeliſts, Chriſt's learning knights[a]. So ſtal knight is with them a groome or ſervant to the ſtable, and knechtwiiſe is ſervice. So in the preface to the 7 penitentiall pſalmes in H. 8. primer, Uriah is called king David's knight or ſervant. So an apprentice is in the Netherlands called a lear-knecht, that is, a learning ſervant. It is likewiſe taken for a client or vaſſall, as incnyght[b]. Whence tenants by knights ſervice were alſo called knights, as in the rolles of eſcuage, and pipe rolles, where eſcuages and aids are accounted for, and in our writs of attaint. Bracton mentions rod knights, for tenants that held by the ſervice of riding from one manor to another with their lord[c]; which was adjudged in H. 3. time, to be ſuch a knight's ſervice, that it drew ward and maryage to it. Generally all tenants who held of the king or of any meane lord, by knight's ſervice, were

[a] Cnihᵵaꝛ leoꝛnunᵹ cnihᵵaꝛ. [b] Cambd. Brit. f. 170. [c] Brooke Droit de recto. 18. De acquirend. rer. demin. lib. ii. c. 35. §. 6. et c. 16. §. 6.

called knights; and by the king's writ might be ſummoned to take that order of knighthood uppon them, and were to be amerced in caſe they did not appear att the day appointed for that purpoſe [d]: ſometimes alſo the king pardoned thoſe amerciaments before the juſtices of the party for not being a knight, and willes that he be not diſtreined to take military armes, that is, to be a knight. And the like appears by the writs to diſtraine all who have twenty pounds a year in land, or a whole knight's fee worth twenty pounds a year, and hold in capite, and ought to be knights and are not; the ſherife is commaunded to diſtraine ſuch, to take uppon them militarie armes without delay. The diſcharges of amerciaments for not being knights doe ſhew the like. This king in a writ reciting the cuſtome of the kingdome, that all who have 20l. land by the yeare, or a knight's fee of 20l. a yeare, ſhould take militarie armes; yett he, in grace, extends it only to ſuch as have 100l. land a yeare. And ſometimes it is extended to thoſe who have 40l. land a year. And ſometimes to ſuch as had butt 15l. land a year; ſometimes to ſuch as had 30l. land a year: butt I conceive that of 15l. a year to be miſtaken, and none to be under 20l. a year. Sometimes the writ hath bin for 50l. a year: both the writs and ſomes have often varied. It appears alſo by record, that the barons of the realme were not excuſed, if they were not knights, butt were bound to appeare uppon theſe writs: as the lord Grey of Cotmore was driven to plead uppon ſuch a writ. So was the lord Brooke, and the lord Ogle. And there the king ſent ſubpoenas to divers lords to take the order of knights of the Bathe with the prince. So the lord Brooke was ſummoned, and Cobham: and the lord Barkley of Durſly pleaded by proteſtation, that he was a peere of the realme; and for plea ſaid, that he had not his lands by the ſpace of three years. William lord Botreaux

[d] 3 E. 1. Rot. clauſ. m. 5.

pleaded

pleaded in like manner. And the lord De la Ware pleaded not his barony, butt that he was a prieſt, and had taken holy orders; and that plea was allowed; elſe perhappes by that precedent, the clergy might have come in. Judge Moyle came in by ſummons, and tooke the order uppon him; ſo did Cheeke and others: but Rolfe, a ſerjeant att law, pleaded that he was a ſergeant, and by his oath was bound to attend the ſuits of the king's people [e]. Many other caſes and pleas uppon this matter are in the records [f]: and the king might ſend forth theſe ſummons not only att his coronation, but att any other times when he pleaſed. King E. 2. made a law in favour of thoſe, who were ſummoned to be knights [g]. And uppon the caſe of Stephens, in the exchequer, judgement was given for the king. Butt the ſame being afterwards conſidered in parlement, and an act preſented to the king who was pleaſed, in much favour to his people, to give his royall aſſent therunto; wherby all ſuch writs and proceedings, to compell any man to take the order of knighthood, are abrogated, and noe meane flower of the crowne deveſted [h]. It were too tedious to ſhow the nature of that tenure by knight's ſervice, the quantity of a knight's fee, the reliefs and ſervices due uppon it; it may ſuffice to ſhew, that tenants by knight's ſervice were to be knights, and called by that name; and poſſibly either by

[e] 6 E. 1. Rot. clauſ. m. 3. Rex non voluit quod W. H. diſtringatur ad arma militaria ſuſcipienda.—6 E. 1. Rot. clauſ. m. 8. dorſo.—Ad arma militaria à nobis ſuſcipienda.—7 E. 1. Rot. pat. m. 5.—8 E. 1. Rot. clauſ. m. 1.—13 E. 1. Rot. clauſ. m. 9.—20 E. 1. Plees in parlem[t] f. 33. a.—21 E. 1. Rot. fin. m. 25.—Seld. Tit. hon. f. 319, 320.—44 H. 3. Rot. clauſ. m. 14.—6 E. 2. Rot. clauſ. m. 16. dorſo.—Littleton's argument in the caſe of knighthood. in ſcaccar. temp. C. 1.—T. 5. E. 4. Rot. 16.—T. 5. H. 8.—10 H. 7. Rot. 13.—T. 1. R. 3. Rot. 61.—5 E. 4.—15 E. 3.—P. 12. H. 4. Rot. 19.—M. 13 H. 4. Rot. 23.—T. 5. E. 4. Rot. 21.—M. 9. H. 6. Rot. 14. [f] Caſe of knighthood, antea. [g] Stat. 1 E. 2. De militibus. [h] 3 C. 1. in ſcaccar.—17 C. 1. c. xx.

election or by tenure, ſome of them antiently might come as members to our publique councells.

Another notion of the word knight is for the chiefe gentlemen or freeholders of every countey, who were called knights [i]. And thoſe elſewhere named feudatarii, were here called knights; as the king's knights, the knights of the archbiſhop, the knights of earle Roger, of earle Hugh, etc. [k] that is, their tenants, who received their lands with condition to ſerve for them in the warres; the which tenure they called knight's ſervice, and thoſe tenants or freeholders were tearmed knights.

In this ſence the word is uſed in the ſtatute of Weſtm. 1. [l] that through all ſhires ſufficient men ſhall be choſen to be coroners, of the moſt wiſe and diſcreete knights: this is explained afterwards by another ſtatute [m], that the coroners ſhall be choſen in the full counties, by the commons of the ſame counties. And judge Fitzherbert ſaith the word knights was putt into the ſtatute, to the intent the coroners ſhould have ſufficient freehold in the counties [n]. Our German antiquary ſayes, we find that the name of knight is not now of us only uſed to ſtand for eques auratus, which is ordinarily a knight, butt is alſo borne in regard of bearing authority or office [o]; as we ſee in our knights of the ſhires, who are yett not properly knights, as the name of knights is properly underſtood. Butt the ſtatute of H. 6. cleareth this [p], where it enacts (as hath bin before noted) that the knights of ſhires for the parlement ſhall be notable knights, of the ſame counties for the which they ſhall be

[i] 2 Tit. hon. Seld. p. 770.
[k] Cambd. Brit. p. 171. Milites regis, milites archiepiſcopi, milites comitis Rogeri.
[l] Stat. Weſtm. 1. c. x.
[m] 28 E. 3. c. vi.
[n] Fitz. N. B. f.
[o] Verſtegan, p. 319.
[p] 23 H. 6. c. xv.

choſen;

choſen; or otherwiſe ſuch notable eſquires gentlemen borne, of the ſame counties, as ſhall be able to be knights; and no man to be ſuch knight, which ſtandeth in the degree of a yeoman, or under.

Having conſidered who theſe knights to be choſen ought to be, in the next place the number of them is to be conſidered: and this writ directs two for the countey; and ſo it hath bin for many years in the writs of ſummons; butt formerly the number of them hath bin uncertaine.

In the time of king Canutus, to a charter then graunted to the monaſtery of St. Edmond's Bury (probably in a publique councell) after the ſubſcriptions of the queen and dukes, followes, "I Oſlaus, knight, I Thored, knight, I Thurkell, knight," and ſo of others [q]. How many theſe were, or how for ſeverall counties, doth not appeare; nor in that parlement of the ſame king (for ſo it teſtifyed by the deſcription of it) where it is ſayd, that "the king calling all the praelats of his kingdome, and the nobles, and great men to his parlement," there were preſent, biſhops, abbots, dukes, earles, "with many militibus," butt the certaine number is not extant; nor of thoſe which are mentioned in the parlement of Edward the confeſſor, where, after the king, queen, archbiſhops, biſhops, abbots, king's chapleins, thaines, knights are reckoned in that parlement. In magna charta, for the king's graunt of their liberties, the biſhops, nobles, knights, etc. give him a fifteenth of all their moveables [r].

[q] 4 E. 3. Inſpeximus. Rot. cart. m. 58.—Ego Oſlaus miles, ego Thored miles, ego Thurkell miles, etc. [r] Co. ep. ix. R. Spelman. concil. p. 534. Cunctos regni ſui praelatos procereſque, et magnates, ad ſuum convocans parliamentum—Cum quam plurimis militibus, etc.—Spelman. concil. p. 627.—25 Ed. conf. Conventus celeberrimus—Comitibus, miniſtris ſeu thanis regiis, et militibus.—9 H. 3. c. xxxviii.

Mr. Prinne hath noted the varieties of the king's writs [s], ſummoning ſometimes 4, ſometimes 2, ſometimes butt one knight out of a countey. Accordingly we find in that writ before noted, in king John's time, the ſherife was to ſummon four knights of his countey, to conferre with the king att Oxford; and the like was to all other counties [t].

In the 32 H. 3. knights are mentioned to be in the parlement; and four knights for every countey in the 42 year of his reigne.

In the 51 year of his reigne, butt one knight for every countey was ſummoned to be choſen for the parlement [u].

In the 16 year of E. 2. we find butt one knight returned for a countey.

In the 20 year of his reigne, the parlement ſent a meſſage to him by 3 biſhops, 2 earles, 2 abbots, 4 barons, two juſtices, and three knights for every countey [w].

In 12 E. 3. there ſeems by the rolle to have bin more than two or three knights for a countey, returned to the parlement: and in the 17 year of the ſame king, there was butt one knight for a countey returned to the parlement. In the 26 year of his reigne, butt one knight for a countey returned, and the like in his 27 yeare. And in the ſtatute ſtaple it is ſayd, uppon good deliberation had with the praelats, dukes, earles, barons and great men of the countrey, that is to ſay, of every countey one for all the countey, it was ordeined, as there followeth [x].

[s] Plea for the lords, p. 392.

[t] 15 Jo. regis. Rot. clauſ. p[t] ii. m. 7. dorſo.

[u] Math. Paris, p. 743. 48.—42 H. 3. Rot. clauſ. m. 1. dorſ.—51 H. 3 Rot. pat. m. 15. dorſo. Walſingham. hiſt. Angl.

[w] 16 E. 2. Rot. clauſ m. 19.—Grafton, p. 225, 226.

[x] 12 E. 3. Rot. clauſ. p[t] i. m. 6. dorſo.—17 E. 3. Rot. parl. n. 7.—26 E. 3 Rot. parl. 27 E. 3. Rot. clauſ.

By the ſtatute of H. 8. for juſtice to be executed in Wales [y], among other things it is enacted, that for all parlements for this realm, one knight ſhall be choſen for every ſhire within the dominion of Wales; the election to be in like manner as in England, and the knights to have the like priviledges, etc. as the knights of ſhires in England choſen to the parlement.

In England the conſtant courſe hath bin ſince E. 3. time, to commaund, by writ, every ſherife to cauſe to be elected within his countey, and to be returned to ſerve in parlement for each perticular countey, two knights, and no more nor no fewer. And ſome have made objections uppon the ſame number to all counties alike, as not proportionable; that the countey of Rutland (for inſtance) ſhould ſend as many deputies to parlement as the countey of Yorke. Butt this certainty of number hath bin a long time ſetled; and it were daungerous, by any innovation, to make an alteration in any long ſetled frame and conſtitution of our governement.

[y] 27 H. 8. c. xxvi.

CHAP.

CHAP. XLIX

Girt with ſwordes.

THIS ſhowes the order of knighthood to be eſpecially militarie, though in all times alſo extended to the gowne. The latine word, in this writ uſed for knights, is milites, the which properly ſignifies ſoldiers or warriours: ſome derive miles from the Greeke word, ſignifying war; or, from the Hebrew word of the ſame acceptation [a]. Others will fetch it from that paſſage of Romulus, who choſe out of the people 1000 men, and armed them for publique defence; and the firſt legion conſiſted of 3000 men, and becauſe of the number mille, a thouſand, they were called milites [b]. In the ſame acceptation we meet with the word knight, in that of St. Paul, which in the Saxon interpretation is, "the knight "beareth not his ſword in vaine." And in that ſence it is, to this day, in the Dutch [c].

That it is eſpecially a military order, appears alſo in the Latine name of equites, given to knights, ſignifying horſemen; which appellation is followed in the later languages. The Italians ſay, caualli-eri, the French cheualliers, the Spanyards caualleros; and the more antient tounges, the Brittiſh, call a knight margogh, and the German reiter, the ſame as with us rider, all from horſemen: and they were called knight riders, for their attendance uppon the king in his warres [d]; from them the ſtreet in London is ſuppoſed to be called

[a] Μωλοχ.—מלחמה [b] Varro, lib. iv. [c] Rom. xiii. 4. Ne bipðe ne ſe cnyht butan inteingan hiſ ſpuno. [d] Verſtegan, p. 319.

Knight-

Knight-riders ſtreete, being the place of their reſidence; and ſo knight gild was a confrery eſtabliſhed by king Edgar, without Aldgate London, for 13 knights or ſoldiers, of good deſert to him and the realme. And every one who held of the king, or of any meſne lord, by a whole knight's fee, was by his tenure to ſerve his lord in the warres, as an horſeman.

By our antient lawe it ſeemes, the equitatura, or horſe and armor of a knight, was priviledged from executions [e]. The cuſtome of giving armes and girding with a ſworde, as enſignes of honor and dignity, is very antient both with us and in other nations, as to the creation of knights. The ceremonies therin are noted to have bin of two kinds eſpecially, courtly and ſacred: the courtly were the feaſts, giving of robes, armes, ſpurres; whence the phraſe to adorne with military armes, or with the military belt, is to make a knight [f]. The ſacred are the holy devotions in the church, att or before the receiving of the dignity; whence alſo to conſecrate a knight [g] was to make a knight in both kinds of ceremonies. The ſword and armes were of ſpeciall uſe. Of both (as neer as I may in the order of time) I ſhall ſay ſomething. The antienteſt mention of any courtly ceremonies, uſed at the creation of a knight with us, is that of king Alfred knighting his graundchild Athelſtan, who was afterwardes king, by giving him a purple robe, a belt ſett with precious ſtones, and a ſaxon ſword with a golden ſcabbard [h].

[e] MS. in recept. ſcaccar. Weſtm. 1. c. xliii. Reg. orig. f. 100. [f] 2 Tit. hon. p. 772.—Armis militaribus donare, et cingulo militari, i. e. militem facere.

[g] Conſecrare militem. [h] Malmeſbury de geſt. reg. lib. ii. c. 6. Quem etiam praematurè militem fecerat, donatum chlamide coccinea, gemmato baltheo, enſe ſaxonico cum vagina aurea.

Ingulphus[i], that lived att the conqueſt, ſpeakes of ceremonies in uſe with the Engliſh Saxons before his time, a ſolemne confeſſion, a vigil in the church, receiving the ſacrament after an offering of the ſword on the altar, and redemption of it, and the prieſt's putting it on him that was to be created. And this he ſaith was the cuſtome of England in creating knights: butt that the Normans diſliked it, and held ſuch not to be lawfull knights butt vulgar and common perſons, and changed that cuſtome. Nevertheleſſe we find the offering of the ſword on the altar, and the other ceremonies, continued in the following ages: as John of Saliſbury[k] atteſts, that a ſolemne cuſtome was taken up and uſed, that the very day when any one was to be honored with the girdle of knighthood, he ſhould ſolemnly go to church, and by laying and offering his ſword uppon the altar, vow himſelfe (as it were) by making a ſolemne profeſſion to the ſervice of the altar; that is to ſay, promiſe perpetuall ſervice and obſequious duety unto the Lord. And Peter of Blois ſaith, "att this day young knights and ſoldiers receive their ſwords from the altar, that they might profeſſe themſelves ſons of the church, and to have taken the ſword for defence of the poore, for puniſhment and revenge of malefactors, and delivery of their countrey[l];" an excellent inſtruction for knights, what they are to doe, and in the following words what they are to avoid: for (ſaith one author) "in theſe dayes, ſince they are become adorned with the king's cincture, preſently they ariſe againſt the annointed of the Lord, and rage uppon the patrimony of Chriſt crucified."

William Rufus was dubbed knight by Lanfranke the archbiſhop. Butt att a ſynode att Weſtm. a cannon paſſed that no abbots ſhould dubbe knights[m].

[i] Ingulphus, p. 901. [k] De nugis curial. lib. vi. c. 10. [l] Epiſt. 94.
[m] Math. Paris hiſt. Angl. p. 14.—An° 1102.

King

King H. 1. propoſing, before the marriadge of his daughter to Geffrey of Anjou, to knight him, deſires the earle to ſend his ſon to him to Roan, and there made him knight with many ceremonies perticularly expreſſed by the author [n]. There were putt uppon Geffrey d'Anjou harneſſe of double maile, and gilt ſpurres, a ſhield of lions of Anjou was hung on his necke, a rich helme putt on his head, and an armed ſpeare putt in his hand, and laſt of all a ſword was brought him out of the king's ſtore; thus armed, he mounted a Spaniſh horſe given him by the king: and his five companions had likewiſe armes, ſwords and like robes and enſignes of honor given them, and were thus made knights with him.

Afterwards kings were wont to ſend their ſons unto the neighbour princes, to receive knighthood att their hands; thus was our king H. 2. ſent unto David king of Scots, and Malcome king of Scots ſent to our king H. 2. to take militarie or virile armes; for theſe termes and phraſes, and the ſword and girdle, gilt ſpurres and other ornaments were in that age. When Thomas Sturmy was to receive this dignity from king John, the ſherife of Hampſhire was commaunded by writ to deliver to him a ſaddle and furniture and robes, etc. when he was to be made knight, and to account for it att the exchequer [o].

King H. 3. knighted Alexander 3. king of Scotland, adorning him with the military girdle. After this is a writ ſent from Fraunce by the king, to the maſter of his wardrobe, to deliver to Gaucher de Gomartin, who was to take the armes of knighthood, neceſſaries for the militia of him and his companions. Another

[n] Fauian, in theatr. honor. lib. iii. p. 577.

[o] 6 Jo. reg. rot. clauſ. m. 20. dorſo.

writ to the ſame officers, to find neceſſaries for the militia for two others, who were to take military armes, as was uſed to be found for other new knights [p].

Under E. 1. all things, beſides their horſe and armes, were given them out of the wardrobe [q]. And in this king's time, as in his father's and ſucceſſor's, went forth the writs for all who had ſo much yearly revenue to take military armes: as hath bin before in part noted. Before his voyage into Scotland this king, to grace it, by proclamation ſummoned thoſe who were to be knights by hereditary ſucceſſion, and had wherwith to maintaine the degree, to appear att Weſtminſter att a day, to receive the ornaments of a knight, (ſaving the equipage of horſes) out of the king's wardrobe: thither came three hundred young gallants, the ſons of earles, barons and knights, they kept the vigile in the new temple; the next morning the king gave his ſon the girdle of knighthood and the dutchy of Aquitaine; the prince went to Weſtminſter to knight his companions, and ſo great was the preaſe of people, that two of the knights were thronged to death, and many fainted; the prince girt the reſt of his companions with the order of knighthood.

Under E. 2. Sir Richard Rodney was made knight in the preſence of the earle of Pembroche, who girt him with the ſword; and the lord Berkeley putt on one ſpurre uppon his right foote, and the lord Baldiſmere putt on the other on his left foote, in the halle; and this being done he departed with honor [r]. Judge Thirning relates, that he heard of a lord who had iſſue a ſon, and carryed him to the font; and preſently, as ſoon as he was baptized, tooke his

[p] Math. Paris, p. 1103. and 1000.—37 H. 3. rot. Vaſconiae clauſ. m. 17.—37 H. 3. Rot. Vaſcon. clauſ. m. 18. [q] Math. Weſtm. 1306. ſeu 34 E. 1.

[r] Apud Glouer. Somerſet. De nobilitat. civili an° 1414.

ſword,

ſword, and made him a knight [s]. Heere we ſee the uſe of a ſword only (which it ſeemes was by a gentle ſtroke with it) in the creation. The ſtroke was in like ſort to be given, with a ſword delivered to the king (or his lieutenant that had power of creation) by him that was to be created, and that with both handes; and the name of knight to be impoſed att the giving of it, and an antient knight to be aſſigned that ſhould putt on the ſpurres on the new knight, and performe a vigil with him the next night: att leaſt this forme was to be uſed when the dignity was given before a ſiedge, or in the field [t]. Butt in later ages only a gentle ſtroke with the ſword, on him which is to be knighted kneeling, with the wordes, "be a knight in the name of God, or riſe up ſir knight [u]," or the like, ſpoken or manifeſted by the king (or thoſe that have authority from him) are the uſuall ceremonies. It is an ingenious deſcription of a knight by our engliſh poet:

"A knight there was, and that a worthy man,
That fro the time that he firſt began
To riden out, he loved cheualry,
Trouth, honor, freedome, and curteſy.
Full worthy was he in his lord's warre,
And therto had he ridden no man ſo farre—
Att Leys was he, and att Sataly,
When they were wonne, and in the great ſee,
Att many a noble army had he be.
Att mortall battailes had be ben fifteene,
And foughten for our faith att Tramiſſene—

[s] 7 H. 4. f. 8. Brooke, title Addition. 17. [t] Upton de re militari, MS. lib. i. c. 3. [u] Soiez chevalier au nom de Dieu. Avançez chevalier.

And evermore he had a ſoueraigne priſe.
And though he was worthy he was wiſe,
And of his ſport as meeke as is a maid.
He never yett no villany ne ſaid
In all his life, unto no manner wight.
He was a very perfit gentle knight [w]."

In the mannuel or common prayer booke of elder ages, among other rites of the engliſh church before the reformation, is a forme of bleſſing the ſword of a new knight, who kneeling before the altar, the prieſt ſayes this prayer:

" God, the protector of all that hope in thee, be preſent att our ſupplications, and graunt to this thy ſervant, who with ſincere heart deſires to be firſt girt with the military ſworde, that in all things he may be protected and defended with the helmet of thy power: and as thou dideſt beſtow on David and Judith the power of fortitude, and victory over the enemies of their nation; ſo being armed with thy aſſiſtance againſt the cruelty of his enemies, he may every where be conqueror, and proceed to the defence of the holy church, by Chriſt our Lord [x]."

After other prayers, and the prieſt ſprinkling with holy water, the knight girt with the ſworde, he departes in the name of the Lord.

We have a late caſe in queen Marie's time [y], where the 4 knights, in a writ of right, appeared girt with ſwordes uppon their gownes.

[w] Chaucer, prologue to the knight's tale. [x] Agend. eccleſ. Argentinenſ. f. 279.—Deus, cunctorum in te ſperantium protector, adeſto ſupplicationibus noſtris, etc.
[y] M. 1 et 2. P. & M. Dyer, f. 103. b.

And

And as there was much and conſtant ceremonies touching the armes, and girding with ſwords att the creation of knights: ſo there are ſome in the degrading of them, which is threatned by the king's maſter cooke who, when the knights come from dinner, ſhowes them his knife, and admoniſheth them that they prove good and faithfull knights; which if they doe not, he threatens them to cutt off their ſpurres [z]. Which is part of the judgement of degradation, as appears by the judgement given againſt Sir Andrew Harcley, earle of Carliſle, under E. 2. that his gilt ſpurres ſhould be cutt of from his heeles, and is thus ſett forth in an old ſtory. That the earle was nobely arrayed with a ſworde igurde, and ihoſid, and iſporid; Sir Anthony Lucy, one of the judges, ſpake to him thus: "ſir Andrew, the king dede unto you much honor," etc. then telles him of his treaſons againſt the king, and that by his puniſhment others ſhould take example. Then the old Engliſh goes on; "tho commanded hee a knave anoon to hew of his ſpores of his heles, and after hee let breke the ſwerd over his heed; and after he lete him unclothe of his taberd and his hood, and of his furred cotes, and of his girdle." And when this was done, Sir Anthony ſaid to him, "Andrew, quoth he, now ert thou no knight, butt thou art a knave:" and then the judgement for treaſon was alſo given [a].

In the judgement of treaſon given againſt Sir Ralph Grey, under E. 4. the high conſtable of England ſayd to him, "the king hath ordeined, that thou ſhouldſt have thy ſpurres ſtricken off by the hard heeles, by the hand of the maſter cooke:" then the reſt of the judgement goes on [b]. The like ceremony was uſed in the

[z] 2 Tit. hon. p. 820. [a] Placita coram rege. H. 18 E. 2. Rot. 34. et 35. Walſingham, p. 118.—The Fruit of times. [b] Stow, Annal. p. 693, 694.

degradation

degradation of a knight, uppon a judgement in parlement in king James his time [c]. So much regard was had to the ceremonie of the armes, the ſpurres, and girding of the ſword of a knight!

I ſhall conclude this diſcourſe, as to England, with a petition of the commons in parlement to king E. 3. [d] "that the writs, to ſummon the next parlement, may charge every ſherife for his countey to returne two knights girded with ſwordes:" ſince which time, the writs of ſummons have had this clauſe (girt with ſwordes) unto this day [e].

Among the Hebrewes it was noted, as the uſage of great men and rulers, to be equites, riders, as that paſſage teſtifies: "Speake ye that ride on white aſſes, ye that ſitt in judgement." So it is ſaid that Jair had thirty ſons that rode on thirty aſſe colts; and Abden had 40 ſons, and 30 nephewes, that rode on 70 aſſe colts; and they were honorable among the people, their fathers being judges of Iſrael: and in the like ſence is that of the wiſe man, "I have ſeen ſervants uppon horſes, and princes walking, as ſervants, uppon the earth [f]."

The pſalmiſt ſayth, "gird thy ſword uppon thy thigh, O thou moſt Mighty, with thy glory and thy majeſty [g]." And as the ſword is generally in ſcripture uſed in the ſence of puniſhment and miſery; ſo it is ſometimes expreſſed in the defence, as a bleſſing: ſo is it ſayd of the Lord himſelfe, in the bleſſing of Moſes, "happy

[c] 18 Jac. reg. rot. parl. [d] 13 E. 3. Rot. parl. n. 23. [e] Ceint des eſas. des eſpees. Milites gladiis cinctos. [f] Judg. v. 10.—Judg. x. 4.—Judg. xii. 14.—Eccleſ. x. 7. [g] Pſal. xlv. 3.

art

art thou, O Iſrael! who is like unto thee, O people ſaved by the Lord the ſhield of thy helpe, and who is the ſword of thy excellency [h]?"

The ancient footſteppes of creating knights, if any where (ſaith our great antiquary) may be found from that cuſtome of the Germans remembred by Tacitus [i]: "that it was not the manner for any one to take armes in hand, before the ſtate allowed him as ſufficient for martiall ſervice; then in the publique councell, either one of the princes, or the father of the young man, or one of his kindred furniſhed him with a ſhield and a javelin; this with them ſtandeth inſtead of a virile gowne; this is the firſt honor done to youth. Before this they ſeeme butt as private perſons, afterwards are accounted as members of the commonwealth." This is compared to that cuſtome of the Romans, to give to thoſe who were entring into man's eſtate, and whome they would honor, a virile gown; and they had a military gowne, as the firſt enſigne of honor. Caeſar relates almoſt the ſame thing among the Gaules, "that they would not permit their children publiquely to come unto them, but when they were grown up, and were fitt to ſuſteine the rewards of military duety [k]."

In the ſtate of Rome, the equeſtrian order was betwixt the ſenators and the plebeians; and none were of that order butt ſuch as the cenſors choſe into it, and gave them a publique horſe and a ring [l].

In the german empire a dubbed knight [m], or the knight of the ſpurre, is as with us; nor is the ceremony of making him much diſ-

[h] Deut. xxxiii. 29. [i] Jani Anglor. Seld. p. 44.—De moribus Germanor. [k] Togam militarem.—De bel. Gal. Suos liberos, niſi cum adoleverint ut munus militiae ſuſtinere poſſint, ad ſe adire non patiuntur. [l] Roſinus de antiquit. Rom. lib. i. p. 32.—Qui neque ſenatores neque de plebe, quibus publicus equus et annulus a cenſoribus datus. [m] Ritter Geſchlagen.

ferent from ours: regularly, the person to be honored kneeles, and the emperor's gentle striking him with the sword, and the pronouncing him to be a knight, creates him. The originall of this order, Selden holds, came from the Germans, uppon that passage of Tacitus before noted; and out of Cassiodor, of an instrument wherby Theodoric king of the Goths adopts one to be his son by armes, a grace not given by nature which may deceive us, butt by judgement: "we give thee (saith the instrument) horses, swords, shields, and other instruments of warre; but, which is strongest of all, our judgement; take therfore the armes, to be profitable both to me and thee," &c. Another the like is of Theodorique, king of the East Gothes [n]. This custome is mentioned by Procopius, about the adoption of Cosroes son of Cabades, king of Persia, which the father desired, that his son might therby have pretence to the roman succession: Justin the elder finding this, offered to adopt Cosroes according to the manner of the barbarous nations, by armes, butt not by writing; which would not satisfy the Persian [o]. From hence is that of Warnfred, "to receive armes from the king of a forein nation [p]:" and from this use of those northerne nations came the fashion of knighting into the empire; for the girding with the sword, putting on spurres, and the like, which made up butt an adoption by armes, have bin often used in giving this dignity both in the empire and elsewhere, among the posterity of these nations. The solemnity of girding, of giving "a blow on the necke," putting on spurres, and divers holy ceremonies, also are

[n] Titles of Honour, p[t] ii. p. 491—3; edit. 1726 (M) Cassiodor. Var. lib. iv. for. 2. Olaus Mag. hist. Septen. lib. viii. c. 5. 6. 9. et 10. Damus quidem tibi equos, enses, clypeos, et reliqua instrumenta bellorum, sed, quae sunt omnimodis fortiora, largimur tibi nostra judicia.——Should not the *sed*, in this passage, be read *et*? (M) Sume itaque arma, mihi tibique profutura. — Cassiodor. Var. 8. form. 1.

[o] Ὅτι δὴ ὡς βαρβάρῳ πρυσήκει, δηλονότι ὑ γράμμασιν οἱ βαρβαροι τὰς παῖδας ποιυνται, ἀλλ' ὅπλων σκευῇ.

[p] De gest. Longobard. lib. i. c. 23, 24.

found

found in good teſtimonies that concerne this dignity in the empire. Charles the great ordaines, that the governor of Frieſland, by girding with a ſword, and ſtriking the perſon created on the eare (as the cuſtome then was) ſhould make knights. Frederique 1. held a feaſt att Mentz, to declare his ſon Henry knight, and to gird the moſt powerfull ſword uppon his thigh. So the ambaſſadors of the eaſterne empire importuned the ſame emperor to knight Frederique duke of Swaben; the words are, "to gird him with the ſword [q]." Butt the blow on the eare or cheeke was alſo (it ſeems) in uſe for the moſt common ceremony, and is ſupplyed or meant by the ſtroke with the ſword. Wheruppon Jo. de Beka writes, that in his time many knights, omitting ſumpteous ſolemnities, received the order of knighthood by a ſtroke on the eare or necke [r]. The emperor Sigiſmond knighted Signell, a gentleman in Fraunce; and beſides the ſtroke with the ſword, and the girding, he gave him one of his gilt ſpurres [s]. In the emperor's letters patents of the creation of a knight, he ſaith, "we adorn thee with the girdle, and belt," and "gird thee with the ſword of fortitude," &c. Sometimes giving a ſhield, and the putting on a helme were antiently added to the ceremony of girding with the ſword [t]. Theſe were uſed by the emperours in knighting others; and, by ſome great biſhops in knighting of the emperors. And many notable things are in the orders praeſcribed by the princes of the empire, for the rule of the military order, for William choſen king of the Romans to be

[q] Hauconius de rebus Friſ. et Franc. Mennen. in delic. equeſt. p. 7. Fauin. in theat. honoris, lib. iii. p. 529. Arnoldus Lubecenſis hiſt. Sclau. lib. ii. c. 3. Gladium ſuper femur ejus potentiſſimum accingeret. Radeuicus de geſt. Fred. 1. lib. i. c. 6. Gladio accingi. [r] Hiſt. epiſc. ultraject. p. 65. [s] Till. de reb. Gall. lib. ii. [t] Petrus Calefatus, lib. de equeſtr. dignitat. Fortitudinis gladio accingimus.—Goldaſtus ad Winſbeck poet. Germ. p. 402.

made knight; and the ceremony of a ſtroke on the necke was there uſed [u].

Alſo in the pontificate of Rome is the forme of the creation of a knight, and amongſt the reſt the ſprinkling of the ſword with holy water; and then the pope gives the naked ſword to the young knight kneeling, into his right hand, ſaying: "take this ſword in the name of the Father, of the Son, and of the Holy Ghoſt, and uſe for the defence of thee, and of the holy church of God, and to the confuſion of the enemies of the croſſe of Chriſt, and of the chriſtian faith; and, as much as humane frailty will permit, hurt no man unjuſtly therwith; which he vouchſafe to graunt who, with the Father and the Holy Spirit, liveth and reigneth God for ever!" Then the ſword is putt into the ſheath, and the pope girds the new knight with it, ſaying: "Gird thy ſword uppon thy thigh, O thou moſt mighty! and obſerve that ſaints have not ſubdued kingdomes by the ſword, butt, by faith." Then the new knight riſeth, and ſhakes the ſword naked over his head three times, and putts it up againe in the ſcabberd: then the pope gives to the new knight a kiſſe of peace, ſaying, "peace be with thee;" and taking the ſword naked againe into his hand, he gently ſtrikes the new knight, kneeling before him, three times on the ſhoulder, and ſayth, "Be a knight, peaceable, valiant, faithfull, and devout to God." Then the ſword being putt up againe, the pope gives to the new knight a gentle ſtroke, ſaying, "Be thou raiſed from the ſleepe of malice, and watch in the faith of Chriſt, and laudable fame;" and the knights ſtanding by putt the ſpurres on the new knight: after prayers the new knight kiſſeth the pope's hand, and, laying downe his ſword and ſpurres, departs in peace.

[u] Lamb. Schafnaburg. in Chron.—Goldaſt. conſtit. tom. iii. p. 400. Snous hiſt. Batav. lib. vii. Dempſter. lib. iii. de jurament. cap. 19.

William

William de Badenſel, a german knight, ſayes in his being att the holy land, " I made two knights uppon the ſepulchre, girding them with ſwords [w]." In France the making of a knight bachiler is deſcribed to be thus: when a ſquire who hath ſerved long in the warres, and hath ſufficient to maintaine his eſtate, is uppon ſervice, he muſt adviſe the chiefe of the army or a valiant knight, and comming before him, make his demaund thus; " Knight, in the name of God and of St. George, give me the order [x]." Then the knight, or chiefe of the warre, muſt draw his ſword, and ſtriking the demaunder three times, muſt ſay unto him; " I make thee a knight in the name of God, and of my lord St. George, lawfully to keepe the faith and juſtice, and to defend the church, women, widdowes and orphanes [y]."

In the Geſta Romanorum and Sallade, the creation is ſett downe: that the prince, or other knight, gives him that is to be honored the ſtroke, and girds him with the ſword of gilt, and the golden ſpurres are afterwards putt on; and he is to make a profeſſion to maintaine the chriſtian faith, the right of ladyes, widowes, and orphanes [z]. Du Tillet ſayth, " the king or prince girdeth about them a ſword, in ſigne that they ſhould abide and keepen him, of whom they have taken their deſpences and dignity [a]."

Francis the firſt of France, reſtored the old ceremonies which had bin left off: butt the author complaines, that in his time honors

[w] Hodeporic. in terram ſanctam, Feci duos milites gladios accingendo.

[x] Liure appel. Diviſion du monde. — Chivalier, au nom de Dieu et de Sainct George, donnez moy l'ordre. [y] Je te fais chivalier, au nom de Dieu et de mon ſeigneur ſainct George. [z] Prince ou aultre chivalier luy donnera l'accolte, & luy ceint d'eſpee dorée; puis luy ſont chauſſez les eſperons dorés. [a] Booke of Cheſſe-play, tranſlated by Caxton.

were

were adulterated, and the dignity of knighthood promiſcuouſly conferred uppon flatterers, powerfull and gratious men, or rich men who never ſaw warre; even without ware or merchandize, the teſtimony of eminent virtue, as a reward for money [b]. And their chancery phraſe is, "to be adorned with the military girdle." If any one with them, not being a gentleman (on the father's ſide) had received this dignity, he was to be degraded, and that by his lord's cutting of his ſpurres uppon a dunghill. To the ſame purpoſe it is in an old manuſcript of the ſtate of France [c].

In Spayne, the dignity of the knights of the ſpurre was in great eſteeme. After bathing, his vigill paſt over, and a maſſe heard, he that was to give him the dignity came to him, and aſkt him, if he deſired to have the order of knighthood? Uppon his ſaying he did, he aſkt him, if he would keepe the lawes of knighthood? Which graunted, he either by himſelfe or ſome other knight putt on his ſpurres, then girt him with a ſword [d]; the more antient courſe as is ſaid in the Partidas was, that he ſhould be wholly armed, ſaving his head only, which remained uncovered: then drew out the ſword, and putt it in the right hand of him that was to be created, and gave him an oath, that he ſhould not refuſe to dye, either for defence of his law, or of his king, or of his countrey. The oath being taken, he gave him a ſtroke on the necke, that he might the better remember what he promiſed, ſaying, "God aſſiſt you in the performance of that which you have promiſed." Then he that

[b] Hadrianus Junius Batav. c. xix. The words, as recited by Mr. Selden, vol. iii. p. 591, (in the edition quoted above) are theſe. At alii hoc ſeculo inolevere mores, quando honores adulterantur, dignitatis equeſtris gradus adulatoribus, potentibus et gratioſis hominibus, aut opulentibus, qui militiam nunquam viderunt, etiam citra ſpectatae virtutis teſtimonium, ceu emptitia merx promiſcuè confertur. (M) Vincentius Lupanus de magiſtr. Francorum. c. de equit. ordin. [c] Choppin. de juriſdict. Andegav. lib. i. c. 63. §. 2. Faire trencher ſes eſperons ſur un fumier. [d] Partid. 2 tit. 21. lib. xiii. xiv.—Zuritam in Annal. Arragon. lib. xii. c. 34.

created

created him, and the reſt of the knights preſent kiſſed him; and all other knights that mett him in the yeare following were bound to doe the like, as a teſtimony of their faith and love to him [e].

Alfonſo 10. king of Caſtile, in the releaſe of his rights in Gaſcoigne to prince Edward, ſon of our king H. 3. recites, that he had girt him with the girdle of knighthood [f]. And this was of ſo great eſteeme among them, that ſometimes they named the year from thence: as in a charter to the monaſtery de Santo Benito, it is ſaid to be in that yeare that Don Edward, eldeſt ſon and heir of king Henry of England, received knighthood in Burgos from the king Don Alphonſo aforeſaid [g]. This old way of knighting became diſcontinued, and the king had liberty to uſe thoſe ceremonies or not: butt the knight thus made was bound to give ſpeciall honor to him that created him, and to his padrino that ungirded the ſword from him [h]. He was bound to protect ladies, and not to ſell or pawne his horſe or armes without the commaund of his ſoveraigne, or inevitable neceſſity, nor venture them att play. His horſes and armes (as in England) were not to be taken from the knight in any ſuit, unles nothing elſe was to be found, and then the horſes of his own ſaddle were priviledged. The manner of degrading him was, the king commaunded an eſcudero, or ſome gentleman, to putt on ſpurres on the knight, and to gird him with a ſword; and then that he ſhould cutt in ſunder the belt or girdle behind, and alſo the ſpurre-leathers; which done, he loſt the honorary title of knight for ever after.

[e] Pur ſu ley, pur ſu ſennor natural, pur ſu terra.—Una Peſcoçada. [f] 39 H. 3. Rot. Vaſcon. m. 12. et Mat. Weſtm. an° 1254. Cingulo eum accinxerat militari. [g] Guardiole de la nobleza, c. xxxv. En el anno que Don Odoart, fijo primero et heredero del rey Enrice de Angleterra, recibio cavallerio en Burgos del rey Don Alphonſo ſobredicho. [h] Ordinament. Caſtiliae, lib. iv. tit. 1. lib. viii. et recopilat. lib. vi. tit. 1. lib. vi.

In

In Swedland (ſaith our author of the titles of honor [i]) and in thoſe northerne kingdomes, the making of knights is ſometimes uſed with more ſolemnity than only the ſlight ſtroke of a ſword; the belt, ſword, and ſhield were ſometimes given togither with fiefs: and I may hope for excuſe in ſetting downe the forme therof, bicauſe of the perticular reaſon which I have to honor that order beſtowed by their princes [k].

The forme of the oath, which for the ſubſtance therof is worthy to be knowne and followed, is to this effect.

I N. doe wiſh that God, and the bleſſed virgin and St. Eric, may be ſo propitious unto me, as I will, to the utmoſt of my power, by my life and goods defend the catholique faith, and the holy goſpell, and keepe and protect the church and the miniſters therof in their liberty and immunity; and to ſtand againſt all that is wicked, and to keepe peace and juſtice, and to defend pupills, and orphanes, virgins, widdowes and the poore; and I ſhall be faithfull and ſecure to my king, and to my kingdome or countrey, and juſtly performe and exerciſe the military ſtate, to the honor of God, according to the beſt of my power: ſo helpe me God, and all his ſaints!

Beſides this way of creation of knights with uſuall ceremonies, as with us and in other kingdomes, the king of Sweden doth it ſometimes by letters patents under the great ſeale of Sweden; a precedent wherof is extant to Sir Henry St. George, who was ſent to Guſtavus Adolphus with the order of the garter, and by this king honored with a patent of creation to be a knight, made in his campe in the view of his whole army. And the patent deſires all princes and

[i] P. 458. [k] Olaus hiſtor. Septentr. lib. xiv. c. 7. Mr. Whitelock had the order conferred upon him, in Sweden. (M)

ſtates,

ſtates to allow therof: and it were a wrong to ſoveraigne majeſty not to allow of a knight made by any ſoveraigne prince, the order being univerſall, and allowed by all princes in all countries whatſoever.

In Scotland, the title of knight is given, after an oath, and ſometimes with more ceremony than att this day in any place of the world, and neerer the ancient faſhion when the girding with a ſword, and putting on of ſpurres were neceſſarily uſed in the giving of it[l]. The manner of it may beſt be ſeene, by the knighting of thoſe gentlemen who carry the enſignes of honor before the baron or viſcount att their creations; who with due regard thankes him that created him, and craveth favour that, according to the antient cuſtome, the gentlemen bearers of the enſignes of his honors may be dubbed knights: the lord commiſſioner commaunds the ſame to be done, and the king att armes calles the gentlemen by their names, and makes a ſpeech to them, they kneeling before the lord commiſſioner; then cauſeth them to hold up their hands, and take an oath much to the ſame effect as the oaths formerly recited. Then the king att armes gives the ſword of honor to the lord commiſſioner, who ſtriketh the firſt of the gentlemen thrice with it, on the right ſhoulder, ſaying, "Avances, chivalier," and att the ſame time his ſpurres are putt on by ſome antient knights preſent: then the king att armes pronounceth his ſtile, Sir J. N. of O. knight; then the heralds and purſivants, the trumpets ſounding forth att the windowes, proclaime it; and ſo the other gentlemen are knighted.

In Ireland the lord deputy uſually hath the power of making knights, by his commiſſion. Their antient manner of making knights, eſpecially of the ſons of their kings[m], was, that the young

[l] Cambd. Britt. p. 684.—Demſter de Juram. lib. iii. c. 19. [m] Froiſſard, vol. iv. c. 63.

knight, att his making, runnes with ſlender lances, ſuch as he can weld being commonly butt 7 years of age, att a ſhield ſett up on a ſtake, in the middle of a meadow; and the more launces he thus breakes, the more honor continues with his dignity. And this was the forme of making young knights in their countrey.

My excuſe for being ſo large upon this ſubject may be pleaded from the great antiquity, and univerſality of this title, wherof it is ſaid, that king and knight goe through the world; and therfore, may require the more time [n].

[n] Caluin's caſe poſt-nati. Co. rep. 7.

CHAP.

CHAP. L

Moſt fitt.

BEFORE it can well be diſcovered who are "moſt fitt" to be choſen members of this ſupreame publique court, and councell of the whole kingdome, it may be requiſite to conſider who are unfitt, and uncapable to be elected to this great and high councell and judicatory.

By the law of England, he who is under the age of one and twenty years is not ſui juris, cannot diſpoſe of himſelfe or his eſtate, nor mannage his owne affayres, or oblige his perſon or fortune; nor can ſue, or be ſued in his own name, or doe ſuch ordinary legall acts as a man of full age, that is, above 21 yeares of age may doe: much leſſe fitt is one ſo under age, whom the law will not truſt in his owne private affayres, fitt to be truſted with the mannagement of the great and weighty affayres of parlement, which in ſo high a meaſure doe concerne the fortunes, liberties and lives of all the people of England. And therfore by the cuſtome and law of parlements, he that is under the age of 21 years is not held qualifyed, nor fitt to be a member of either houſe. Wherof there be ſeverall reſolutions in the journalls of parlement yett extant: and therfore ſuch a perſon within age cannot come, under the qualification of this writ, to be one of the moſt fitt to be elected a knight of the ſhire to ſerve in parlement.

Among the Jewes it was a qualification for members of the ſanhedrim, that they ought to be above 20 years of age; and the

talmud gloſſe is, that they were not fitt for the great buiſnes of that councell, untill they were 40 years old. Butt this is not underſtood of a man to be unfitt bicauſe he was old, they are commonly moſt fitt for councell; butt he who was broken with age [a], ſo that he became altogither unfitt for buiſnes; if he was debilitated by age, wanting ſtrength and memory, then he was held not fitt. Butt if ſuch imbecillities were not uppon him, how old ſoever he were, they did not reject him: nor hold him unfitt though under fourty years old, if he were otherwiſe fitly qualified. Theruppon ſome call Solomon, who (as is affirmed) was butt 12 years of age when he began to reigne, an old man, bicauſe of his wiſdome; and Rehoboam, who was fourty years old when his father dyed, they call a young man, bicauſe he followed the young mens councell.

Parte of the oath of the Athenian ſenators was, that they were aged thirty years; before which age they were held unfitt to be ſenators [b]. The 44 arbitrators, elected by the archonti in Athens to be their aſſiſtants, were every one of them to be paſt 60 years old. Lycurgus eſteemed the crowne or honor of a man's life to conſiſt in old age; and ordeined by a law, that age ſhould be more highly honored than the beſt ſtrength of youth. And to extremity of age they were imployed in publique affayres, and incouraged in duety to apply themſelves to virtue. The 8 quinquagenarii, men of fifty years old a piece, were commanders of the army: and in all imployments they gave moſt reſpect to men of greateſt age and experience.

The Romans did the like, and therfore called their counſellors ſenes and ſenatores, and their councell ſenatus. Their appellations

[a] Ultimae ſenectutis hominem.

[b] Demoſthen. in orat. contr. Timocrat.

of

of patres and patritii are teſtimonies of the veneration they bare to old age; yett their account was not only of old men by age, butt of old men by wiſdome [c].

The ſenators choſen by Romulus, were of ſuch who were moſt wiſe, not who were againe children by age: and thoſe they called and choſe to be ſenators, who were eminent in age and virtue [d]. Sigonius affirmes the ſenatorian age to be 21 years as with us [e]. By the civill law 25 years is the age which we terme full age: butt in Rome and all other countreys, young men in age or manners were not held fitt for the great imployments of publique councells; butt old age and experience were held moſt fitt qualifications for counſellors, and were highly regarded according to that binding law, " thou ſhalt riſe up before the hoary head, and honor the face of the old man [f].

By the law of England, a man deafe and dumbe, or blind, or an ideote or madman, are not capable to be members of parlement. Nor perſons attainted of treaſon or felony, or outlawed. And as the reſolution was in 1 H. 7. thoſe parlement men who had bin attainted by the uſurper yett, being attainted, they went out of the houſe untill a bill was paſt for reverſing that attainder, and then they were re-admitted; butt it was not held fitt for them to be members of the parlement, whileſt they ſtood (though by ſuch a power) attainted. In like manner ſuch as are guilty of bribery and corruption, or other heynous crimes, are not fitt to be choſen to ſerve in parlement; butt if they be members of parlement, they will be, uppon complaint and proofe againſt them, removed againe, and

[c] Senes aetate, ſenes ſapientiâ. ſaperent. Ætate et virtute praeſtantes. Rom.

[d] Plut. in Romul. Per aetatem maxime

[e] Lib. ii. de antiquit. jur. civium

[f] Lev. xix. 32.

expelled

expelled by judgement of parlement from that high truſt, as unfitt for it. And heerof there are many antient precedents in the rolles of our parlements; and of later times, in the caſe of the viſcount St. Albans, and of the earle of Middleſex yett freſh in memory, and in divers others extant in the journalls of the houſes [g]. Aliens are not fitt to be choſen to ſerve in parlement; which extends not only to forein aliens, butt to aliens to the countey where they are elected; if the ſtatute were obſerved, that none butt reſiants in the reſpective counties, cities and buroughs where they are choſen [h], be elected. Butt this law, by time and connivence to contrary practiſe, is become as if it had not bin made.

The Hebrewes were very ſevere as to the fittnes and qualifications of their publique counſellors. With them the comelines of the perſon was much regarded; ſo that they would not admit to a place in the ſanhedrim, any whoſe ſtature, countenance and demeanor was uncomely: as one that was blind of both eyes, or of one eye, or deformed, mayhemed, deafe or thick of hearing, or the like; and they thought him unfitt who was childleſſe or an eunuch [i], wherof the poet gives the reaſon:

> An eunuch is not moved with piety,
> To none affording any clemency.
> He takes no care for children, nor is he
> For kindred ſtudious: if all might be
> Alike unhappy, this perhappes would pleaſe;
> Society in griefe, the mind doth eaſe [k].

[g] 18 Jac.—21 Jac. [h] 1 H. 5. c. i. [i] Gemar. Babilon. ad tit. Menacoth. c. vi. f. 65. 1.

[k] Claudian. lib. i. in Eutrop. —— Eunuchus nullâ pietate movetur,
Nec generis natiſve cavet: clementia cunctis
In ſimiles, animoſque ligant conſortia damni, etc.

Such

Such were eſpecially debarred from judging in capitall cauſes; butt were admitted to be judges of idolaters, as more cruell than others, bicauſe they held cruelty to them was mercy [l]. The rabbins agree idolaters to be unfitt for members of the ſanhedrim; alſo ſabbaoth-breakers, uſurers, and thoſe who taught the flight of pigeons, or made gaine of the fruits of the ſeaventh yeare, or yeare of remiſſion. Likewiſe players att dice, or other games wherin, fortune only being the judge, they covet gaine; and the reaſon why they held gameſters unfitt was, becauſe they eſteemed them infamous, chiefly in regard that therby they were preſumed to be covetous: and the gaine therby ariſing they counted a kind of rapine, bicauſe it came by fortune, and bicauſe ſuch games and artes were in no wiſe conducible to the publique good. They give the reaſon againſt gameſters, bicauſe they doe not accuſtome themſelves to thoſe things which tend to the ſettlement of the age wherin they live, or which are profitable to humane ſociety: yett that of gameſters was underſtood of ſome ſports immoderately uſed and traded in, not of ſports ſeldome uſed, nor of honeſt recreations; nor if a man leſt his trade of gaming, or of uſury, was he then unqualifyed [m].

And by uſurers not being qualifyed, was underſtood the borrower as well as the lender [n]; and it was held unfitt for thoſe of the ſanhedrim wholly to buiſy themſelves about any other matters butt the law and retribution of benefits, or charity and offices of courteſy, and merchandiſe, and ſuch arts and workes as doe conduce to the publique good and benefit, (an excellent precedent for all counſellors): butt unlucky and evill actions, they held, did make men

[l] Gemar. Babilon. tit. Sanhedr. c. iv. f. 36. [m] Rabbi Obadias Bartenor. ad Miſn. tit. Sanh. c. iii. §. 3.—Gemar. Babilon. c. iii. f. 24, 25.—Seld. de ſynedr. lib. ii. cap. ix. S. 5. [n] Deut. xxiii. 19.—Lev. xxv. 37.—Selden, ubi ſuprà.

unfitt

unfitt for ſo great an imployment as to be members of publique councells.

The vice of gaming was likewiſe forbidden by the roman lawes, and the buying a draught of a nett, or of any thing uncertaine, and of hunting, hawking, and the like, if they were for profit's ſake; and ſuch drones, or covetuous perſons, were by them and by the Graecians, and by all nations, (whoſe perticular lawes in this point would be too tedious to recite), as alſo all criminous, vitious, deformed, unjuſt and ſcandalous perſons, held unfitt and unworthy to be publique counſellors; and they would remove and expell any ſuch crept in among them [o].

In the conſideration of thoſe who are moſt fitt to be members of ſupreame courts and councells, as our parlements are, I ſhall borrow my methode from the rabbins, who reckon ſeaven qualifications of counſellors and magiſtrates, according to the counſell of Jethro to his ſon-in-law Moſes, in the choice of judges [p].

1. Wiſdome.
2. Humilitie.
3. The feare of God.
4. Contempt of riches.
5. The love of trueth.
6. The love of men.
7. A good reputation.

Firſt, Of wiſdome it will be proper to ſpeake uppon another occaſion.

[o] Lib. 10. D. de contrahend. emp. et lib. vii. de heredit. vel actione vendit.—Roſin. de antiquit. Rom. p. 278, 279. [p] Exod. xviii. 21.—Deut. i. 15.

2. Of

2. Of humilitie ſomewhat hath bin ſaid before; and ſurely nothing of outward deportment makes a man more fitt, or more likely to be choſen a publique counſellor, than humble words, humble geſtures, and humble actions, which take the minds and affections of all men, eſpecially of engliſh men: butt a tedious vexatious attendance on great men, a ſupercilious neglectfull carryage of ſenators, who can beare? God hath declared, "him that hath an high looke and a proud heart, I will not ſuffer[q]." The roman candidates found how diſtaſtfull it was to carry themſelves loftily before election, and therfore to ſhow their humility (as hath bin before noted) uſed to ſalute every cittizen whom they mett with ſome friendly and familiar compellation. Butt the ſtories of humility both of engliſh and of other nations (though more were to be wiſhed) yett are too many to be heere recited: thoſe of the holy ſtory, and the advice for it, cannot be too often repeated, and are to be found in the lives of Abraham, of Iſaac, of Jacob, of Joſeph, of Moſes, and all the patriarches; of Boaz, of the princes of Ephraim, of all the good kings, prieſts and prophets of God[r]. The holy counſells to humility are many and excellent: the apoſtle adviſeth all people to be clothed with humility; and gives the reaſon, for (ſaith he) "God reſiſteth the proud, and giveth grace to the humble[s]." The wiſe man aſſures us, "that before honor is humility:" he aſſerts likewiſe, that "by humility, and the feare of the Lord, are riches, and honor, and life[t]." The ſure way to be in favour with men, to be choſen to preferment and honor, is to be humble, which will bring us not only in favour and to honor with men, butt with God likewiſe. Job tells us, that "God will ſave the humble perſon." And the pſalmiſt affirmes, that "God hath heard the deſire of the

[q] Pſal. ci. 5. [r] Ruth ii. 8.—1 Sam. xxx. 11.—2 Chro. xxviii. 15.—Jer. xxxviii.—Acts viii. 31. etc. [s] 1 Pet. v. 5. [t] Pro. xv. 33. & xviii. 12.—Pro. xxii. 4.

humble[u]." And his wiſe ſon concludes, that "it is better to be of an humble ſpirit, with the lowly, than to divide the ſpoyl with the proud[w]." I ſhall conclude with the counſell of the apoſtle, "humble yourſelves in the ſight of the Lord, and he ſhall lift you up." A courteous humble demeanor towards all men begetts affection, and good opinion of a man; which is the true and beſt way to honor. An humble man hath loweſt thoughts of his owne judgement and abilities, and is moſt willing to heare and to ſubmitt to better; and therfore moſt fitt to be a law maker.

3. The 3 qualification of counſellors, mentioned by the rabbins, is the feare of God, which indeed makes men moſt fitt for that great truſt; and without which nothing can be done wiſely by them, nor like to proſper. If the counſellors be not holy, their councells and lawes cannot be holy; and then I am ſure a bleſſing cannot be expected on them. Councells are the houſes of God, and we are inſtructed that "holynes becomes the houſe of God for ever[x]." Butt this argument may be referred to another word, and would take up too much of this chapter.

4. Qualification is the contempt of riches, which is alſo reſerved for another place.

5. Qualification is the love of trueth, that is juſtice, and is proper for the diſcourſe of another occaſion.

6. Qualification is the love of men; and he that is not a lover of men is not fitt to be a governor of men, the inſtitution of government being for the good of men. It is a rationall policy of our

[u] Job xxii. 29.—Pſal. x. 17. [w] Pro. xvi. 19. [x] Pſal. xciii. 5.

law,

law, that thoſe laws which are made in parlement doe bind the law makers as much as any other: and therfore, if they conſider the love of themſelves, they muſt alſo conſider the love of others in the exerciſe of their parlementary power; as they ſhew therin love to others, ſo they ſhow love to themſelves.

In the praecept of our Saviour, "Learne of me, for I am meeke and lowly," the greeke word there uſed ſignifies love of men; and is taken for the nature of man, and for a virtue which doth conſiſt in the outward ſupplies, by condeſcending to the defects of others [y]: and Cicero deſcribeth the workes of it, "to afford helpe to thoſe that ſupplicate it, to raiſe up the afflicted, to give ſafety, and to free men from daungers [z]." Theſe are the effects of that generous humane virtue, the love of men.

The ſame is fully expreſſed by the prophet, where he ſaith, "The Lord hath annointed me" (the true end of annointing) "to preach good tidings to the meeke, to bind up the broken-hearted, to proclaime liberty to the captives, and the opening of the priſon to them that are bound [a]." Theſe are the fruits of the love of men; theſe are qualities which make them moſt fitt to be publique counſellors. It is not to love themſelves, and ſeeke after their private and perticular intereſt; butt to love others, and to deny themſelves, which allowes them to be fitt and worthy ſenators. All thoſe noble and generous ſpirits who att any time heere, or in other countries, have adventured their lives in the ſervice of their king and countrey, and for the publique defence, have expreſſed this love of men to be in them; and deſerve the love of men

[y] Mat. xi. 29. Φιλανθρωπία, humanitas, amor erga homines. B. Thom. ſup. epiſt. Paul. ad Tit. 3. Col. 3. [z] Lib. i. de orat. Opem ferre ſupplicibus, excitare afflictos, dare ſalutem, liberare periculis homines. [a] Iſai. lxi. 1.

againe. The ſtories of them would fill a volume, which can never be too great.

Whatſoever good lawes, wholſome councells, and righteous judgements have bin given in our parlements, or in any publique councells, are ſo many teſtimonies of the love of men in thoſe worthy ſenators. Philoſophers and moraliſts have much diſcourſe on this argument, and divide this virtue into ſixe heads. 1. Juſtice, loving all, chiefly virtuous men, hurting none, deſiring to doe good to all. 2. Equity, tollerating the infirmities of men, knowing and not hating their manners. 3. Courteſy in demeanor towards all. 4. A deſire of profiting men. 5. Meekenes in converſation. 6. Friendlines in behaviour, actions and doing good offices to all men. Whatſoever in Story comes under any of theſe braunches is applicable to this qualification.

Butt there is no need, nor would be any end of reciting examples and authorities on this ſubject; [b] that of the noble Roman gives a patterne to all, who ſingly fought againſt the ennemy till the bridge was broken down behind him, and then leaped into the river, and therby ſaved the citty. This verifyed his being of the opinion, that "it is ſweet and comely to dye for one's countrey [c]."

It was an early law given by God, "Thou ſhalt love thy Neighbour as thyſelfe." This is quoted by the evangeliſt, who goes further, and injoynes us to love our ennemies [d]. The ſame commaund is againe by him cited, and in many other texts we are putt in minde of it, and commaunded to practiſe it. The old law goes further alſo: "Thou ſhalt love the ſtranger as thyſelfe." We muſt

[b] M. Regulus. Decii.

[c] Dulce et decorum eſt pro patria mori.

[d] Lev. xix. 18.—Mat. v. 3.

love

love our neighbour, and we muſt love ſtrangers; we muſt love all men. We are taught of God to love our ennemies, and to love one another, whereof there is a great number of texts injoyning this duety; and the holy texts give the reaſon of the good of this duety. "Love worketh no ill to his neighbour, therfore love is the fulfilling of the law. And he that loveth another hath fulfilled the law. Let us love one another;" and he gives the reaſon, "for love is of God, and every one that loveth is borne of God, and knoweth God." There cannot be more patheticall expreſſions to perſwade to the love of men. Our bleſſed Saviour, foretelling his owne death, ſaith, "Greater love hath no man than this, that a man lay downe his life for his friend." Butt when we were ennemies and traitors againſt our God, he that "thought it no robberie to be equall with God, humbled himſelfe, and became obedient unto death, even the death of the croſſe, to purchaſe by his own bloud the remiſſion of our ſins." So the apoſtle expreſſeth it. "Scarſely for a righteous man will one dye, yett peradventure for a good man ſome would even dare to dye; butt God commendeth ſo his love towards us, in that while we were yett ſinners Chriſt dyed for us: and the end of his death was love to men, that we might live togither with him in glory [e]."

There needes no other example of love to men: and whoſoever hath not this infinite free love of God towards men alwayes before his eyes, and in his deſires to be a follower thereof, is not worthy the name of a ſenator; much leſſe, of the moſt honorable title of a chriſtian.

[e] Mat. xix. 19. et xxii. 39.—Mar. xii. 33.—Rom. xiii. 9.—Ja. ii. 8.—Lev. xix. 34.—Jo. xiii. 35.—Heb. xiii. 1.—1 Jo. iv. 7.—Lu. vi. 35.—Jo. xv. 12.—1 Theſ. iv. 9.—1 Pet. i. 8. 22.—1 Jo. iii. 11. 23. et iv. 7. 21.—Rom. xiii. 10.—Rom. xiii. 8. — Jo. iv. 7.—Jo. xv. 13. — Phil. ii. 6. 8. — Rom. v. 7, 8. — 1 Cor. xv. 3.—1 Theſ. v. 10.

7. Qualification

7. Qualification of ſenators is a good reputation, the winning wherof (ſaith the viſcount St. Albans) is butt the revealing of a man's virtue and worth, without diſadvantage[f]. Butt ſuch as in their actions doe wooe and affect honor, and reputation, are commonly much talked of, butt inwardly little admired. If a man ſo temper his actions, as in ſome one of them he doth content every faction or combination of people, the muſique will be the fuller. A man is an ill huſband of his honor, that entreth into any action the fayling wherin may diſgrace him more, than the carrying of it through may honor him. Diſcreete followers and ſervants helpe much to reputation[g]. Envy, which is the canker of it, is beſt extinguiſhed by declaring a man's ſelfe, in his ends, rather to ſeeke merit than fame; and by attributing a man's ſucceſſes rather to divine providence, and foelicity, than to his owne virtue or policy: he who thus gaines a reputation may deſervedly be held one of the moſt fitt men for publique truſt and imployment. Plutarch telles us, that the contempt of a good reputation is a vice conjoyned with impudence and madnes[h]. And the old poet contents himſelfe, "if I can butt keepe a good reputation, I am rich enough[i]."

A good or bad reputation is the offspring of a man's good or bad actions, according to that anſwear of the graecian prince, being aſked how a man might gaine a good reputation, anſwered, "By ſpeaking the beſt things, and doing the honeſteſt actions." With this agrees Epictetus: if thou wilt have a good reputation, "Learne to ſpeake well, and indeavor to doe well[k]."

[f] Eſſay, of honor and reputation. [g] Fama à domeſticis emanat.
[h] In Alcibiade. [i] Plaut. Moſtell. Ego ſi bonam famam mihi ſervaſſo, ſat ero dives. [k] Ageſilaus. Plut. in Lacon. Apoth. Si loquatur quae ſunt optima, et faciat quae ſunt honeſtiſſima.—Stob. ſerm. 1. de virtut. Diſcito bene loqui, et bene facere conator. Μάθε καλῶς λέγειν—πειρῶ καλῶς πράτ̃ειν.

This

This qualification of a good reputation is the conſequent of the former; he that hath the love of men in him, will performe good offices towards them, and this will ſurely gaine him a good reputation. And ſo of the contrary, as our engliſh proverbe is; he that hath a good name may lye abed till noone, and he that hath an ill name is halfe hanged. Indeed by the law of England and of moſt countries, common fame or reputation is ſufficient for an accuſation, though not for a condemnation. So the houſe of commons reſolved, in the caſe of the duke of Buckingham, in parlement, wherof I was an auditor; where Littleton diſtinguiſhed between a generall voice or report of neighborhood, and a rumor which is a perticular aſſertion from an uncertain author [l]; and this is according to Lindwood and other writers [m]. Another difference hath bin taken, that where the reputation or fame is upon a generality, without any perticular ſpecification, it was rejected; butt the party was ſent to the Tower, when the reputation was perticular, that he would have betrayed the kingdome to the king of France. Noy, in that caſe, held, that uppon reputation or fame one might take a recogniſance, or commit to priſon; and it is a good ground to accuſe or arreſt, butt not to ſpeake ill of a man; and proceedings are uppon it in all courts, and in the houſe of commons whoſe proceedings (ſaith he) are not definitive, or concluſive to condemnation, butt only by way of information, and denunciation or preſentment, as the grand jury of the whole kingdome.

By our common law reputation or fame is a good juſtification, in an action of falſe impriſonment, to have arreſted the party to anſwear the law; butt it is otherwiſe in an action uppon the caſe for ſcandall: bicauſe the firſt was legall, and for the publique good; the other was

[l] Parlement. 2. in. 1. C. 1.—Communis vicinae acclamatio, particularis aſſertio ex incerto authore. [m] F. 58. f.—En parlem[t] 28 H. 6. 29 H. 6.

only

only to vent malice or vanity [n]. It hath bin ruled by our judges, that reputation or common fame within the countey, that one was a rebell, or had committed a felony, was ſufficient to arreſt him, without any other cauſe: butt this is not transferrable to another; he who arreſts muſt ſuſpect, and it muſt appear that ſomething was done, and then it is ſufficient [o]. In our eccleſiaſticall courts, the judges proceeded to informe their conſciences, and may cite ex officio [p].

Proceedings uppon reputation and fame have bin in parlement, in the caſe of the duke of Suffolke, and of the duke of Somerſet, and others. Butt in the caſe of the biſhop of Durham, who had traduced the houſe of commons, and was by them accuſed therof on common fame, the lords rejected it, bicauſe there was no other ground of the complaint: butt the commons reſolved to record it in their houſe, therby to make him infamous [q]; butt this was doubted by ſome, as not juſt, uppon common fame only to proceed to ſuch a kind of condemnation; though in ſome caſes it was ſayd, "that the voice of the people is the voice of God," yett not alwayes [r].

With the Hebrewes, after one had undergone the puniſhment of the lawe for an offence, he was to be reſtored to his reputation. And in ſome caſes it was lawfull to inflict puniſhment of ſtripes uppon common fame, and an ill reputation only [s].

So it was among the Athenians:

[n] Dyer. 236. 6 H. 7. Eliz. [o] 11 E. 4. 4.—7 E. 4. 20.—2 H. 7. 3. et 16. [p] Dr. Coſins, lib. ſuper violatione ſacramenti. [q] 28 H. 6.—29 H. 6. Rot. parl. n. 16, 17.—12 Jac. [r] Vox populi vox Dei.
[s] Helach Sanhedrim. c. xvii. §. 8.—De ſynedr. lib. ii. Seld. p. 570.

The voice of people celebrates for good
Or bad repute, and ſo it firmly ſtood [s].

Fame with the antients had an altar, as a powerfull goddeſſe. And Boccalini holds, that one thing is unſatiably to be provided for, a proſperous memory of one's ſelfe, a good reputation [t]. The faults of the gods (that is of great men) were not knowne (as one notes) before the birth of the goddeſſe Fame, who diſcovered them. And there is no judicatory in Chriſtendome, where there is not ſome proceeding uppon fame and reputation. Matchiavell relates of the Florentines, that they inſtituted a judicatory to proceed by publique fame; the reaſon was, bicauſe none would be wittneſſes againſt the nobles. And thoſe who live baſely and wickedly, fame is to be the accuſer and wittnes againſt them [u].

Surely a good reputation is a moſt deſirable qualification for ſenators; and to be indeavoured by all men to be gained. The wiſe man was of this opinion; "A good name is rather to be choſen than great riches, and loving favour rather than ſilver and gold. And a good name is better than pretious ointment [w]."

Gamaliel is commended by the holy word, for a man who was had in reputation among all the people; and that he was moſt fitt to be a ſenator, appears by that pious and wiſe councell which he gave unto the aſſembly, who had not the grace to follow it [x].

[s] Quem populi ſermo celebrat creber, irrita nunquam, inſatiabiliter parandum, proſperam ſui memoriam. [t] F. 443. Unum [u] Mach. hiſt. Fiorent. lib. ii. f. 43. b. Feceſi che la publica fama baſtaſſe a giudicare per quelle leggi, etc.—Qui nefariè atque turpiter vivunt, etc. [w] Prov. xxii. 1.—Eccleſ. vii. 1.
[x] Acts v. 34.

Surely he that hath an ill name, no good reputation, is not fitt to be elected to that great truſt of being a member of parlement: butt a good reputation is to be regarded in the election of perſons to that high imployment, and makes them the more qualified and fitt to receive that honor, and to undergoe that burden, to ſerve their countrey in their publique councells.

CHAP.

CHAP. LI

And discreet men.

UPPON this word, "and discreet men," it may not be improper, for diversion and variety, a little to discusse that old question, whether women be qualifyed to be in publique councells? By the custome of England women are not returned of juries, nor putt into offices or commissions, nor eligible to serve in parlement, or admitted to be members of the house of peeres; butt, by reason of their sexe, they are exempted from such imployments.

That they ought to be so is urged from severall texts: "Take wise men," etc. "Thou shalt provide able men," etc. "And Moses chose able men out of Israell, and made them heads over the people[a]." Butt no direction, or choise, is of women to be magistrates, or publique counsellors.

The apostle directs, "Lett the woman learne in silence with all subjection; butt I suffer not a woman to teach, nor to usurpe authority over the man, butt to be in silence[b]." And most of the versions beare it, "that she is not to usurpe authority over her husband or any other man."

Some of the rabbins are of this opinion, that a woman ought not to be made a judge; that they are unfitt for it, and not to be

[a] Deut. i. 13.—Exod. xviii. 1. 15. [b] 1 Tim. ii. 12, 13.

admitted to magistracy and councells, as being, by reason of their sexe, unfitt for such imployments.

This was the custome of the old Graecians, and the law of the easterne empire. And St. Augustin notes, that the woman is subject to the dominion of her husband, and hath no authoritie; she can neither teach, nor give faith, nor judge, how much lesse governe [c]. And this was a generall received custome: yett not that by divine right, or the law of nature, any such thing is commanded, that for want of understanding they are uncapable of magistracy; butt for the priviledge of their sexe, and that they be not mingled with men in the agitation of affayres and suits.

The greeke poet reflects uppon them, where he saith

> Women to good are most unhandy sure!
> But in all evill are artists very wise [d].

The philosopher holds that "the councell of women is weake, and of children imperfect;" ranking those two togither [e].

By the roman lawes women were kept from being judges; not bicause they wanted judgement, or are to be taken as those disabled by nature, as deafe or dumbe or mad persons, or the like; butt bicause "it is a received opinion that they are not to exercise civill

[c] Maimon. tract. Melakin-wenalchama, seu de regibus et bello, c. ix.—R. Gedaliah.—Ben. Jechai. in Shalseleth. f. 14. et al.—Aug. quaest. vet. test. 45. causa 33. q. 5. c. xv.—Panorm. lib. vii. c. 49.

[d] Γυναῖκες εἰς μὲν ἐσθλ' ἀμηχανώταται
Κακῶν δὲ πάντων τέκτονες σοφώταται.

[e] Arist. lib. i. Polit. Concilium mulieris est invalidum, pueri autem imperfectum.

offices,

offices [f]." The like is also delivered by their great lawyer Ulpian, that " women are removed from all civill or publique offices;" and therfore can neither be judges, nor magistrates, nor deputies, or proctors for others [g]. And Justinian willes, that they be separated " from all judiciall assemblies [h]." And this was the law of the westerne empire, and of the cannons.

Some french men, who have written in defence of their salique law, and for the setting of it up to defeate the title of our king E. 3. to that crowne, have bin led by that argument to write against governement by women: and more severe than others in this point is Bodin, who not only justifies the salique law, butt inveighs against the governement by women as contrary to the law of nature, which hath given to men wisdome, courage, magnanimity and power of commaund; butt hath taken it away from women [i].

I thinke an answear may be given to these objections: and first touching our owne countrey, our stories give sufficient testimony of the good opinion of our aunceStors concerning women, and their esteem of them as fitly qualifyed for governement, and councells both smaller and greater, and often to the royall trust itselfe. And this is not the observation of a few dayes. To passe the agreement of the Scoti, when the wives were asked that, in case of failer of the male line, that the females should injoy the crowne [k]. Tacitus makes it a note in his time, that the Brittains used to make

[f] Paulus, lib. xii. cum Praetor. §. 2. D. tit. de Judiciis. Sed quia receptum est ut civilibus officiis non fungantur. [g] Ulpian. lib. ii. D. tit. de reg. Juris. Foeminae ab omnibus officiis civilibus, vel publicis, remotae sunt. [h] Lib. vi. c. de receptis arbitris. Ab omni judiciali agmine. [i] Bodin. lib. vi. de Repub. c. v. [k] Bede.

warre under the conduct of women; and made no diſtinction of ſexes as to governement [l]. Uppon this place it is affirmed, that the brittiſh women were not exempted from the warres; and many of that ſexe were renowned for their valour, with them [m]. Our german aunceſtors eſteemed ſomething holy and provident to be in womens councells, which they did not deſpiſe, nor neglect their aunſwears; ſometimes, through increaſe of ſuperſtition, accounting them as gods [n]. Caeſar confirmes it to be "the old cuſtome of the Brittains to adviſe with their women, in matters of peace and warre: and if any queſtions did ariſe with their companions, they were referred to the arbitration of the women [o]."

In that great controverſy between the two brothers, Brennus and Belinus, by their mother's wiſe councell and arbitration (to which they both ſubmitted) a peace was made between them, and they lived as brothers togither [p].

The ſtory of queen Boadicea is notable: ſhe was the widdow of Praeſutagus, king of the Iceni, who, in hopes therby to preſerve his eſtate, had by will made Claudius and his owne two daughters his heirs; butt after his death, his queen was whipped, his daughters defloured, his wealth ſeiſed, and his people kept under miſerable ſervitude by the inſulting Romans. This (as a provoking cauſe) moved an inſurrection, and Boadicea was choſen for their leader: who ſo well acquitted herſelfe both in councell and conduct, that under her, though a woman, fell 70000 Romans, and their

[l] In vit. Agric. et Annal. 4. Foeminarum ductu bellare, et ſexum in imperiis non diſcernere. [m] Speed hiſt. Angl. p. 26. [n] Jan. Anglor. p. 29. [o] De bell. Gall. Mos inolevit ut pacis et belli cum foeminis conſilia inirent. Si quae quaeſtiones cum ſociis inciderent, earum arbitrio has committerent. [p] Galfr. Mon. hiſt. lib. iii.—Mat. Weſtm. aetas 5. p. 53, 54.

towne

towne Verolam was ſacked [q]. And as in her proſperous ſucceſſe, ſo in her adverſe condition afterwards, the height of her ſpirit appeared; rather to chooſe death by poyſoning herſelfe, than to continue in ſlavery when ſhe ſaw the Romans victors over her, and her people by the ſlaughter of 80000 of them in one battaile.

In the charters of the ſaxon kings, made in their parlements, we find abbeſſes often named as wittneſſes, and that among the biſhops and nobles: as in the charter of king Offa to the abbey of Croyland, is ſubſcribed "I Ceolburgha, abbeſſe of Berdea, have aſſented [r]," etc. The like is in the charter of king Edgar, to the ſame abbey, made in parlement: among the ſubſcriptions of the peeres is, "I Merwenne, abbeſſe of Rumſey, have made the ſigne of the holy croſſe." The like is by the ſame abbeſſe in parlement, and by the abbeſſe Wulwina, and ſeverall others [s]. And the ſame author informes us, that the charter of king Ethelwulphe was made, "in the preſence, and with the ſubſcriptions of firſt the archbiſhops, after them of the kings of Mercia and Eaſt Angles, and an infinite multitude of abbotts, abbeſſes, dukes, earles, nobles and other faithfull people of the land." And ſeverall of the like are in our ſtories. Malmeſbury mentions a parlement held by king Edgar, in which Alfgina his mother was preſent [t]. And Cnute in his parlement is ſayd to have reſtored and placed monkes in a monaſtery, "by the councell of Emma the queen, and of the biſhops and barons of England [u]." The courage and magnanimity of Gunmild, ſiſter to king Swayn, is commended (who was marryed to a nobleman,

[q] Tacit. Annal. lib. 14.—Cambden. Brittan. p. 49, 50. [r] Ingulphus, hiſt. p. 854. Ego Ceolburga, abbatiſſa de Berdea, aſpiravi, etc. [s] Ego Merwenna, abbatiſſa de Rumſege, etc. Ingulphus, p. 882, 883. [t] Malm. lib. ii. c. 8. p. 57, 58. [u] Mat. Weſtm. p. 423. Conſilio Emmae reginae, et epiſcoporum ſimul et baronum Angliae.

and became a chriſtian) when the bloudy duke Eric (to whome ſhe and her huſband were in cuſtody as hoſtages) cauſed her huſband and ſon to be ſlaine before her face, and then herſelfe to be beheaded whoſe wiſdom and counſell had affected the peace; and all this ſhe bare with undaunted courage and conſtancy [w].

The ſaxon lady Egitha, queen to Edward the confeſſor, is ſaid to have bin very learned, milde and modeſt, faithfull and honeſt, excellent qualifications for ſenators [x].

Our queen Cartiſmandua deſerves a place among the worthy women for counſell and governement.

Of the ſaxon queen Sexburga, it is related, "that there was not wanting in her a ſpirit fitt to undergo the offices of a kingdome; and that ſhe knew how to levy new armies, how to keep old ones in their duety. She could mildely governe her ſubjects, and by force tame her ennemies. She could doe all things ſo, that no difference butt of the ſexe appeared in her actions [y]."

The daughter of W. 2. Maud the empreſſe, is ſett forth to be a gallant woman, qualifyed for counſell and action. She conducted her ſon, afterwards king H. 2. and a great army from France into England; defeated king Stephen and his adherents; and by her wiſdome, courage and counſell, inveſted her ſon in his right of the crown of England [z].

[w] Hen. Hunt. hiſt. lib. vi. p. 360.

[x] Ingulphus, p. 895: Litteris apprimè erudita, mitis et modeſta, fidelis et honeſta.

[y] Malmeſbury, lib. ii. de geſt. reg. c. 2. Spiritus ad obeunda regni munera, novos exercitus moliri, veteres tenere in officio, ipſa ſubjectos clementer moderari, hoſtibus minaciter infremere, prorſus omnia facere ut nihil praeter ſexum decerneres.

[z] Hiſt. eorum tempor.

The

The wife of our king E. 2. managed great affayrs; butt her abilities are clowded by her infamous dealing with her king and husband. So were those of queen Mary stained with impiety, and the innocent bloud of holy martyrs shed in her time.

The lady Margaret, countesse of Richmond, mother to our king H. 7. had great power and authority, and wanted not wisdome and abilities to support it. She (though a woman) was putt into commissions of the peace and publique offices.

In the actions and sufferings of Mary, soveraign queen of Scotland, appeared great abilities of wisdome, courage, learning, counsell, and immense patience: and had she mett with the like candor, faithfullnes, humanity, cleernes and royall confidence, as lodged in her own breast, her story had not bin writ in bloud; as it was to the shame of those that shed it, butt to her owne immortal glory.

All the historians agree, that our queen Elizabeth was not outgone by any of her predecessors, in policy, wisdome, constancy and good succes; and that she governed with such prudence and good counsell, that she became obeyed att home and feared abroade; and procured much increase of trade, peace, and (which is above all) light of the gospell to her owne people, and to her neighbours [a].

Butt I must hasten to our great exemplar, the holy story: where we reade of the wisdome and policy of Rebecca; of the propheteſſe

[a] Cambden, Speed, Hollinshed, Martin, Daniel, Baker, etc.

Deborah who went to the warre with Baruch, and the children of Israel came up to her for judgement [b].

It is recorded of Abigail, that she was a woman of good understanding; and she shewed it in preventing the daunger and evill which her husband's folly had like to have brought uppon them, and their family [c].

The carryage of the buisnes commended by Joab, unto the woman of Tekoah, was very prudent and successefull [d].

The wise woman, who had great authority in the citty of Abel of Beth-Maachah, gave good counsell to Joab, the generall of the king's army, who hearkened therunto, and so did the cittizens; and therby saved a citty, and a mother in Israel [e].

The queen of Sheba was doubtles a very wise woman, who came to prove king Solomon with hard questions, and gave so good a judgement of him [f].

Huldah was a propheteſſe, of whose wisdome and counsell the Israelites had so great an opinion, that king Josiah sent unto her to inquire of God, and to consulte with her about the estate of the nation [g].

Queen Esther adventured with much courage, and carryed her buisnes with great wisdome for the preservation of her nation [h].

[b] Gen. Jud. iv. 4, 5. [c] 1 Sam. xxv. 3. [d] 2 Sam. xiv. 2, etc.
[e] 2 Sam. xx. 16, 17, 18, etc. [f] 1 Kings x. 1, etc. [g] 2 Kings xxii. 14. [h] Esther vii. 1.

The

The wife of Pilate gave her husband good counsell. Butt wisest of all was Mary, who chose that good part which shall not be taken away [i].

The wise man asserts, that a virtuous woman is a crowne to her husband. And the son of Syrach adviseth, "Forgoe not a wise and good woman, for her grace is above gold [k]."

The Graecians rejected not the counsell and governement of women. The emperor Heliogabalus had so great an esteeme of womens fittnes, and being qualifyed for publique counsell and governement, that he instituted that assembly of matrons which they called the senate of women. And mention is made in severall authors, and councells, of senators of both sexes, senatrices, presbiters, and presidents of womens councells, and many the like termes and expressions testifying, that there were publique councells of women; butt the word presbiteresses is not mett with among them [l].

Theodosia, after the death of her husband and brother, was empresse; and in that place was feared and obeyed, and that without the helpe of father, husband, or brother. She is sayd to governe the empire most nobly, in peace and prosperity, and her death was griefe to all her subjects [m],

We reade of a woman whose learning and witt was so great, that she gott into the pope's chayre, and two years togither mainteyned

[i] Mat. xxix. 7.—Lu. x. 42. [k] Prov. xii. 4 —Eccleſiaſt. vii. 19.

[l] Lampridius in Heliogab.—Vopiscus in Aureliano. Conventus matronalis. Senatus mulierum.—August. de morib. eccles. c. ult. et in vit. Desider. p. 52. [m] Synod. Lodicaea, can. xi. — Epiphan. haeret. 39. Senatores utriusque sexus, senatrices, presbiterae, πρεσβυλίδας, προκαθημένας. Presidentes sed non presbiteressae.

[m] Platina.—Martinus Sabellicus.

her eſtate and credit, till her being delivered of a child gave teſtimony of her faith and ſexe, and caution to the gulled praelats for future elections.

The Amazons were moſt warlike and wiſe women, as the hiſtorians report them; and without the counſell of any men they vanquiſhed great armies, ſubdued large countries, provinces and citties [n]. The account of them, and generally of women, by Pedro Mexio in his chapter of Amazons, is very full; and that they have gone bejond men in all kind of virtues. Another holds, " that in extreame neceſſity and ſuddein daunger, they doe find out remedy and counſell, and are very good in apprehending ſuddein and unexpected counſells [o]." And the poet, who was a lover of women, in their prayſe ſayth:

" The name of women doth all honor merit,
And by it is imply'd a virtuous ſpirit [p]."

As to the roman lawes, they ſometimes admitted women to councell and governement; and ſometimes they did not; as the occaſion did require. And the patrimoniall offices women were admitted to injoy by inheritance, to which the power of judging apperteined and was exerciſed by women; and it is evident that they (as well as men) were admitted to publique judgements and conſultations by the antient Greekes, Romans, Germans, Brittains, Gaules and others, the examples wherof would be too many to be heere recited [q]. And frequently women were received to the royall dignity

[n] Diodorus Siculus, Pomponius Mela, Propertius, Claudian, etc. [o] In extrema neceſſitate et periculo ſubito inveniunt remedium et conſilium, et ſubitis conſiliis excogitandis valent plurimum. [p] Ovid. de arte Amandi. i. Ipſa quoque et cultu eſt et nomine foemina virtus. [q] L. unic. c. de mul. Taraquell. ad leg. ii. Connubial. gloſſe i. p[t] ii. Azevedo. ad recopilat. 3. tit. 9. §. 20, etc.

itſelfe in Germany, England, Sweden, Denmarke, Scotland and other countries.

Queen Chriſtina of Sweden was of rare abilities for publique matters: ſhe diſcourſed perfectly in the French, High Dutch and Italian languages; in treaties would, on the occaſion, write her objections and anſwears in good Latine; underſtood the Greeke, Spaniſh and other languages, and generally moſt points of learning, and the affayres and intereſt of moſt princes and ſtates of Chriſtendome. Her orations to her publique councells, and to forrein miniſters, were with ſuch grace, majeſty and prudence as could hardly be expected from a young lady: and her management of ſtate affayres ſuch as cauſed her own ſubjects and ſtraungers to acknowledge her abilities for government, and to wonder att her abdication.

Bodin, in his declamation againſt women and their governement, is not pleaſed to remember, that in Fraunce, when their kings were minors, they permitted women to be regents; as Blaunch to have the tuition of Lewis, Iſabel governed under Charles the 6. and Katherine de Medicis in the minority of her ſon: nor that which his countriman remembers, "that the women are capable to hold peerages, have their opinion in judgements, and ought to be adjourned and called thither as other peers, bicauſe they hold dignities which have the exerciſe of juſtice[r]." And there he mentions the counteſſe of Flanders, in the judgement for the county of Clermont; and Mahault counteſſe of Arthois, as a peere, was party to the ſeverall judgements againſt the earle of Artois. The dutches of Orleans and the counteſſe of Artois were adjourned to be att the judgement of John of Montfort, and of the king of Navarre.

[r] Du Haillan, lib. viii. f. 232. Les femmes ſont capables de tenir pairries, ont opinion en jugemens, et y doiuent adjournees et appellees comme les autres pairs, pour ce que elles prennent dignitez ayans exerciſe de juſtice.

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In the Jani Anglorum it is ſaid, that Bodin's arguments will not be ſtrengthened by the counſell and conduct of Deborah, nor by the examples of the queen of Sheba, of the italian Amalaſintha Atemiſia, nor of the aegiptian wiſe women, nor of the aſſyrian Semiramis, Tomiris, Zenobia, and infinite others [a]. Nor could Bodin have eſpied thoſe defects, which he makes generall in that ſexe, in Boadicea, Cartiſmandua, Sexburga and others, in whom thoſe virtues and abilities eminently ſhined forth, which he affirmes to be wanting in all of that ſexe. The Cecropii, Minerva, Agenora, Penelope deſerve to be reckoned up. With the gods Jupiter, Neptune and Pluto, the goddeſſes Juno, Salacia and Proſerpina did reign in heaven, on the ſea, and on the earth.

The concluſion of our author, concerning women, will not offend them if I borrow it, and communicate it to them in their mother tounge, which ſpeakes to this effect.

Who would not affect women? It ſeemes to me a wickednes to ſo great a comfort of human kind, to ſo ſweet an alleviation of the ſharpeſt labours and changes of life, to ſo deare a guift of the moſt ſupreame nature, not to give a due regard and honor.

[a] Seld. Jan. Anglor. p. 29.

CHAP.

CHAP. LII

Of the ſaid countey.

THE latine word in the writ for "countey," comitatus, is derived à comite, countey from the count or earle, as dutchy from the duke. Others would have it comitatus à comminando, bicauſe from that court of the countey puniſhment is threatned to malefactors. The court of the emperor and of kings was antiently called comitatum, and their ſervants comites, which title was afterwards transferred to principall officers, who being ſent to the governement of citties and provinces, their praecincts were called counties[a].

Coke derives comitatus à comitando, bicauſe the men of a countey accompany togither in their courts of juſtice and publique affayres[b]. Lambart ſayes, "that what we now call a countey, antiently with the Brittains, in the time of the Romans in the kingdome of Brittaine, was called conſulatus[c]." And antiently a countey was ſo much land as the earle is commander of[d].

The Saxons called a countey by the name of ſhire or ſchire; and ſhires were portions of land conteining ſo many townſhips: and ſcyran, in the ſaxon tounge, ſignifies to divide, bicauſe every countey or ſhire is divided and parted, by certain metes and bounds, from another[e]. A countey hath alſo the name of bailiwick, as in many of

[a] Otto Friſingenſis.—Spelman. gloſſar. hoc verbo. [b] Co. on Litt. p. 50. [c] Quod modo vocatur comitatus, olim apud Britones temporibus Romanorum in regno iſto Brittanniae vocabatur conſulatus. [d] Jannenſ. Canoniſt. [e] Co. on Litt. f. 50.

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our writs, and the returnes therof, the ſherife is commaunded to doe ſuch a thing within his bailiwicke, that is, in his ſhire; and he returnes, "ſuch a one is not found within my bailiwicke[f];" and the like. And a ſhire, or countey, and bailiwick is all one.

The Hebrewes called that portion of land which was aſſigned to each tribe by the name of that tribe; as the land of Judah, the countrey of Zebulon, of Ephraim and Manaſſeth, the land of Napthali, and many the like[g].

So we reade of the land of Goſhen, a praecinct or territory in Aegipt called by that name[h]. The Romans uſed generally the name of provinces for their diſtinguiſhed territories; and all countryes, in their ſeverall languages, give names to the circles and portions of land as they have divided them.

[f] Non eſt inventus in balliva mea. [g] Mat. ii. 6.—Jud. xii. 12.—2 Chron. xiii. 10.—1 Ki. xv. 20. [h] Gen. xlv. 18, etc.

CHAP.

CHAP. LIII.

And of every citie.

CITTIES are the objects of lawes and governement, where persons are mett togither to live and trade in civill societies, from whence some derive the name of citty [a].

Patricius Senensis saith, that when children and nephewes increased, it was necessary to add houses, and so to constitute societies of many houses; and when people became sencible of the benefit of humane society, and how much more easy it was for many than for few to provide food and live safely togither, they conjoined families to families, and fortifications were invented [b]; and so citties were raysed, that people might live plentifully and safely togither, and the more free from force and violence: so that he calles a citty a "collected multitude of men, to live well and rightfully togither [c]." Butt heerof somwhat hath bin noted before.

By the comment uppon Littleton we are told, that a citty is a burrough incorporate, which hath or had a bishop; and though the bishoprick be dissolved yett the cittie remaines [d]. King W. 1. ordeines, that no fayre or markett be kept butt in citties, and burroughs inclosed with wälles castles and fortifications; and sayes, that therfore they are built and founded, "for the defence of the nations and

[a] Civitas quasi civilis societas. [b] Lib. i. tit. 3. p. 18. [c] Collectam hominum multitudinem ad jure vivendum. [d] Co. on Litt. p. 109.

people of the kingdome, and for the ſafety of the kingdome[e]." Our author cites a record, that Cambridge was a cittie[f]; and of Weſtminſter it is noted before. All other of our citties are biſhops ſees, and are countyes of themſelves, except Cambridge, Ely and Weſtminſter.

In Domeſday it is ſaid, that in the citty of Yorke, in the confeſſor's time, there were 7 ſhires. So that a citty may conteine ſeverall counties, though ſmalle ones.

The Hebrewes called the principall of their towns citties, as the citty of Samaria, the citty of Jeruſalem, the citties of Refuge, and the more eminent towns in all countries, were called citties, the perticulars wherof are ſufficiently knowne to all, and require none of our time to mention them. St. Auguſtin hath written 22 excellent bookes of the citty of God, and fetcheth the originall of citties from Cain and Abel, who were the founders of the two cittyes which comprehend the whole world. The firſt was founded by Cain, whoſe name ſignifies poſſeſſion, and is the citty of the divell, including the wicked of this world who have their poſſeſſion and inheritance in this life; who labour to gaine worldly things, and place their delight and joy in the poſſeſſing and injoying of them, and their miſery in the loſſe of them. Moſes ſayes, that Cain was the firſt that built a citty: ſo thoſe who belong to the citty of the divell, in the firſt place, ſeeke for themſelves a ſeate, and quiet and felicity on earth.

The other citty was built by Abel, and is the citty of God: his name ſignifies mourning and vanity; his cittizens, the people of God, uſe to mourne for their own ſins and for the ſins of others,

[e] Ad tuitionem gentium et populorum regni. [f] Mich. 7. E. 1. rot. 1.

and doe account the things of this world butt vaine and tranſitory. The father ſaith, theſe two citties made two loves; the one was earthly, the love of themſelves, to the contempt of God; the other was heavenly, the love of God to the contempt of themſelves[g].

'Tis worth our meditation, what is become of the citty of Enoch, of Babel, of Sparta, of Athens, of Jeruſalem herſelfe which was the prayſe of the whole earth. Are not theſe and many other famous ſeats and citties become heapes uppon heapes! and ſhall not the preſent flouriſhing citties become in time alſo heapes uppon heapes? Will not their ſins haſten on their rubbiſh? The apoſtle truely telles us, we have heere no abiding citty[h]. Empires, kingdomes, citties and families, as well as perſons, have their fates and periods. Sett not therfore, whoſoever thou art, thy affection uppon theſe earthly cittyes, be none of Cain's cittizens, butt gett thy name inrolled as a cittizen of the citty of Abell, of the new Jeruſalem; gett one of thoſe many manſions in thy father's houſe, a tabernacle not made with hands, an heavenly inheritance, a portion with Chriſt, a treaſure and abiding place which will indure unto eternity[i].

[g] Pererius commentar. in Gen. iii. 24. p. 231, 232.—St. Auguſt. lib. xiv. de civitate Dei, c. ult. [h] Heb. xiii. 14. [i] Jo. xiv. 2.—Heb. ix. 11.

CHAP. LIV

Of that countey.

IT hath bin noted, that a citty may conteine ſeverall counties; butt generally a countey conteineth ſeverall citties, that is, ſeverall citties may be within the compaſſe and bounds of a countey, as London and Weſtminſter are in Middleſexe, though London be a countey of itſelfe as moſt other citties are. Some counties have no citty in them, as Buckinghamſhire, Berkſhire, Bedford, Huntingdon, Salop, and other counties; it is as it falleth out in the ſcituation of them. Ingulphus writes, that king Alfred, "firſt of all, altered the countryes and provinces of all England into counties [a];" butt (ſaith Sir Roger Owen) you muſt underſtand Ingulphus meaning to be, that the heptarchy being determined, king Alfred did more perfectly or abſolutely reduce theſe countryes [b]: butt that they were more antient than his time appears by many records cited by this author in that chapter, and by the comment uppon Littleton [c] where he cites the lawes of Edward the confeſſor and, among other notes uppon them, ſayes, that this realme was divided into ſhires and counties, and thoſe ſhires into citties, burroughs and townes by the Brittains; ſo that (ſaith he) king Alfred's diviſion of ſhires and counties was butt a renovation or more exact deſcription of the ſame.

[a] P. 870. Totius Angliae pagos et provincias in comitatus primus omnium commutavit. [b] MS. c. p[t] 2. p. 339. [c] Co. on Litt. p. 168.

A countey being ſo much land as an earle was formerly commaunder of; thence it was that counties are not equally divided. And ſome partes therof, as members cutt off from their bodyes, lye remote: bicauſe ſhires were firſt levelled out not by line, or meaſure of land from land; but, by the reſorte of certaine people to a peculiar court, or countey, where juſtice was adminiſtred. Butt ſhires being more equally † divided: ſome noblemen or gentlemen having ſmalle parcells, or mannours, in one countey adjoyning to another; [ſuch parcels or mannours] by uſurpation, (or ſufferance of reſorting of the inhabitants or dwellers therof, being their tenants, unto the courts of the countey where the nobleman dwelt,) came to be accounted parcell of the countey where the nobleman or gentleman did dwell.

The king may, by his charter, erect a citty into a countey [d]; and judge Jones affirmed, that it was the reſolution of all the judges of England and Ireland, that the king by patent only may take from one countey, and adde to another; and ſo he doth whenſoever he makes any citty a countey.

Some doe hold, that the diſtinctions of counties was made by the Berengarii: others under Otho, or Charles the great; which may be true of many of them, yett ſome are more antient: and generally, where there was an officer called a comes, the territory or præcinct under his government was called a countey [dd].

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† The adverb *equally*, as uſed by the author here, ſeems to have no reſpect to the quantity or proportion of acres; but to the *regular* diſtinction of boundaries, and contiguity of parts: as the term εὐθεῖα in greek, recta linea in latin, and right line in engliſh, is defined to be that which lieth *equally* between its points, or extremities. (M)

[d] Lib. Intrat. f. 129. [dd] There is a ſmall inaccuracy in the former part of this period; which may be corrected by the following quotation. "Comitatus (ut ſcribit

In the kingdome of Hungary, the ſeverall provinces are called counties: and Friſingenſis ſayes, " that this kingdom was divided into threeſcore and ten counties, or more;" and each of theſe had their comites, and vice comites, for matters of government [e].

In Sweden are " ſeverall provinces divided into dutchies and counties, and they calle them territories [f];" which the author defines to be a tract, ſpace or dominion of land, or a ſociety of villages, townes, or countries, armed and diſtinguiſhed by peculiar juriſdiction; and the word comitatus, countey, is frequent with them for thoſe territories.

France hath the like diviſion into counties, and that very antient; it being often found in the lawes of Charlemagne, " what diligence the counts ought to uſe, in their counties, that juſtice be adminiſtred to every one [g]." There are, in that kingdome, many counties knowne by the name of counties: and in moſt nations and kingdomes of Europe, the like diviſion of their territories into counties, and the retaining of the word " comitatus" for thoſe territories and diviſions of countries, is ſufficiently knowne.

Andr. Alciat. leg. Pupillus 239. § territorium. ff. de verb. ſign.) proprie de imperatoriâ aulâ dicitur. Sed quià *tempore Caroli magni, regnantibuſque Berengariis et Otthonibus*, ad ſingulas civitates regendas aliquis comes mittebatur; coepit juriſdictio, territorium et diſtrictus (quoniam illi comes praeerat,) comitatus dici." Calvin. Lexic. Jurid. ad verbum Comitat. (M)

[e] De geſt. Fred. i. lib. i. c. 31. Per-70, vel amplius, diviſum ſit comitatus.

[f] Mich. O. Wexionius, deſcript. Suev. lib. i. c. 3. Dividuntur ſingulae provinciae, ſint ducatus ſint comitatus, in ſua dominia ſeu territoria.—The conſtruction of this paſſage is evidently as follows: viz. " Each of the provinces, whether they be dutchies or counties, are divided into their lordſhips or territories."—But I have not ventured to introduce the alteration into the text, as I have not the upportunity of conſulting Wexionius: and either way, the uſe of the word " county," in Sweden, will be ſufficiently eſtabliſhed. (M)

[g] Paſquier Recherches. p. 110. La diligence que les comtes doivent faire en leurs comtez, à rendre droit à chacun.

CHAP.

CHAP. LV

Two cittizens.

A CITTIZEN is a fellow and inhabitant of a cittie. Patricius Senenſis deſcribes a cittizen to be a native of the place, borne of ingenuous parents, or one who is made a free cittizen by the magiſtrates or lawes [a].

The diſtinction of Ariſtotle, of a cittizen analogically ſo called, and a cittizen ſo called ſimply, is true. Butt not to take up much of our time, ſtraungers, ſervants, old decrepite men and children are of the firſt ſorte; for theſe injoy the law and light of the citty, as well as other cittizens [b]: butt bicauſe ſtraungers and ſervants, of themſelves, are not to pertake of civill affayres, and decrepit men are exempt from publique offices and affayres, and children are not capable of them for the defect of age; therfore they are not abſolutely and ſimply, butt analogically to be named cittizens [c]. Butt a cittizen ſimply is defined by no other thing more than by participation of civill power in counſell, judgement and magiſtracy; and is thus defined: "A cittizen is part of a citty, either gotten by nature or approved by publique authority, capable of counſell, judgement and magiſtracy, by act or power [d]."

[a] P. 22. b. Civem indigenam loci, ingenuis parentibus oriundum; vel eum qui à magiſtratibus, vel legibus, civitate donatus ſit. [b] Hii lege et luce civitatis non aliter quam cives utuntur. [c] Caſi ſphaera civitat. p. 196. [d] Eſt civis pars civitatis vel à natura parta, vel publica authoritate approbata, conſilii, judicii, et magiſtratus actu aut poteſtate compos.

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This deſcription of a cittizen fitts all of that condition both in England, and elſewhere: and cittizens are neceſſary members of publique councells, eſpecially in England where trade is of ſo much conſequence, wherof cittizens have more knowledge and experience than others.

Of the reſiancy of cittiſens, to be choſen as deputies to ſerve in parlement, our lawe is very carefull; and therfore it was enacted, that the cittizens of the citties be choſen men, cittizens reſiant, abiding and free in the ſame citties, and none other in any wiſe [c]: though of later times this hath been connived att, in moſt of the elections in citties.

The number of two cittizens for every cittie is generall; except in the metropolis, London, where they elect four of their cittizens to ſerve as their deputies in our parlements.

[c] 1 H. 5. c. i.

CHAP.

CHAP. LVI

And of every burrough.

THE latin word of the writ in this place is burgus, which, with the Engliſh of it burrough, is derived by antiquaries from the ſaxon words burg, burȝ, burh, etc.[a] which we call borough, bery and bury. Some doe bring the word burgus from the greeke word which ſignifies a tower[b]; and ſhow that burgus is ſometimes taken for a mountaine, a caſtle, a towne, and a cittie promiſcuouſly. And the Saxons called thoſe boroughs, which others called townes and citties. Hence the Burgundians had their name, as being dwellers in burghs or fenced places.

Tacitus relates of the Germans[c], and ſo it was with our ſaxon aunceſtors, that they uſed not to putt their dead bodies into graves; butt lying on the ground, they covered them over with turves or cloddes of earth, and the more reputation the perſon had, the greater and the higher were the heaps of earth rayſed over their bodyes: this they called biriging, and ſome beorging and buriging; and we from thence ſay burying[d], that is, hiding of the dead. Theſe birghs or beorghs, ſeeming as hills (wherof there are many evidences in divers parts of England, and in Germany and the northerne countryes) the name birigh, beorgh, and bergh became the generall name of a mountaine; and bicauſe it ſignified to ſhroud or hide,

[a] Spelman. gloſſar. verbo Burgus, burch, berȝ, beorȝ, birȝ. [b] Πυργος.
[c] De moribus Germanor. [d] Verſtegan, p. 212.

therfore the places where conies uſed to hide themſelves were called conyberries and conyburroughs: and the northerne people uſing to fortefy themſelves with huge heaps and walles of earth and turfe caſt up about their campe, to ſhroud and defend themſelves, this they called a burgh [e]; and thence with us, and in other countries, forts or caſtles and walled townes are called boroughs.

Butt we are inſtructed uppon Littleton, that a burgh is ſo called, bicauſe it ſendeth burgeſſes to parlement [f]: rather burgeſſes are ſo called bicauſe they are the deputies of burghs. He ſaith, that of burghs ſome be incorporate, and ſome not; and ſome be walled, and ſome not: that it was in former times taken for thoſe companies of ten families which were one another's pledge; and therfore a pledge in the ſaxon tounge is borhoe, wherof (ſome take it) that a burgh came; and from thence alſo headborough, borowhead, the chiefe pledge or chiefe man of the borough whom Bracton calles frithborgus, and burghbote, an exemption from payments for reparation of the walles of citties and boroughs. That every citty is a borough, butt every burgh is not a citty, nor doth ſend burgeſſes to parlement.

Cowell deſcribes a burgh to be a towne inferior to a citty, which by the king's charter is made a body politique, and exerciſeth juriſdiction within its limits [g]: butt ſome (which he forgetts) are by praeſcription, as boroughs in antient demeſne, and others, which praeſcribe alſo for their juriſdiction.

Burgh and bury have all one ſignification, as Canterbury, Bury St. Edmond, Saliſbury, Malmeſbury, Tewkſbury, etc. which ſend burgeſſes to parlement.

[e] Procop. de bell. Gothic. lib. ii.
[f] Comment. Co. on Litt. p. 108. b.
[g] Inſtitutiones, lib. ii. tit. 3. §. 27. et tab.

An

An hiſtorian relates of Medehamſted, that after the abbot Kenulphe had compaſſed it with a walle, from the likenes to a citty it was called Burch [h]. Spelman ſayes, that when by the eccleſiaſticall cannon it was prohibited, that biſhops ſees ſhould not be butt in citties, that title remained to cathedrall boroughs only; yett the reſt retained the ſhow of citties, having generally a head officer and juriſdiction, and their ſuffrage in parlement by their deputies: and though they become decayed yett they loſe not this priviledge, wittneſs old Sarum, where two houſes and a conyborough chooſe two burgeſſes.

In Germany they have many townes which have this priviledge of ſending deputies to their diett; as Hambourgh, Norimbergh, Magdeburgh, etc. So in Gothland, Gottenbergh; in other provinces, Wiburgh, Arburgh, Ulaburgh, Wanerſborgh, Biornborgh, etc. And in Fraunce and Spayn they ſometimes call a notable town, walled and fortefyed or not, by the name of burgh.

[h] Malmeſbury de geſt. Pontific. lib. iv.

CHAP. LVII

Two burgeſſes.

BURGESSES are the inhabitants and freemen of boroughs. Livy and Saluſt calles them caſtellani; the ſaxon burghwarn [a]. Theſe, exerciſing trades and mechanique artes, were deſpiſed by the nobles; and the ſtatute of Merton holds it a diſparagement for lords to marry their wardes to burgeſſes [b]. Yett I find the wiſdome of our law admitts them as ſharers in the ſupreame acts of governement, and to the higheſt truſt, to be members of our parlements. The like was done by the Ægiptians and other nations: and the holy text mentions artificers with great honor; as of Bezalael, "I have filled him with the ſpirit of God, in wiſdome and in underſtanding and in knowledge, and in all manner of workmanſhip [c]."

Surely burgeſſes and artificers are maine pillars of a commonwealth, for the ſupply and enriching of it. The inventers of arts had the honorable name of fathers: and how meane ſoever burgeſſes and artificers may be eſteemed in theſe partes and ages of the world, yett antiquity and other countries had a great regard of them, as neceſſary and profitable to a commonwealth, to the good wherof every burgeſſe and artificer is an addition; and in his trade or arte there is more of ingenuity or publique advantage, than in the greateſt gameſter, gallant, or debauched drones, who are only "borne to conſume food [d];" when the honeſt trade, labour, and induſtry of

[a] Burghpann. [b] C. vii. an° 1235. [c] Exod. xxxi. 3.
[d] Fruges conſumere nati.

the

the burgeſſe or artificer is an helpe to all, and from all deſerveth countenance and incouragement.

The degrees amongſt us are reckoned to be count, baron, bannaret, chivalier de countee, cittizen de citee, and burgeis de burgh [e].

The king may by his charter make any towne a burgh, and grant them the priviledge of ſending burgeſſes to parlement, and the election of them to be by a ſpeciall number of the inhabitants, as principall burgeſſes, aldermen, and the like; butt where the election is by praeſcription, it is generally popular: and theſe graunts may be uſefull to the crowne, being made to thoſe places which have dependance on it, and are well affected to it. Such were the graunts to the two univerſities, reſtraining the election to certaine perſons of thoſe bodyes, and not allowing all the ſchollars voices in thoſe elections. Queen Mary graunted the priviledge to Abingdon of ſending one burgeſſe to parlement, and king James graunted the like priviledge to Banbury for one burgeſſe; and the like hath been graunted by charter to divers other townes and places, of ſending two burgeſſes to parlement: and doubtles the king may graunt to as many places as he pleaſeth the priviledge of chooſing by ſuch perſons as he ſhall appoint, and ſending of one or two burgeſſes to the parlement, and may make good uſe of ſuch graunts. And the houſe of commons are not diſpleaſed with ſuch graunts, by which the number of their members is increaſed, eſteeming that to be for the advantage of the commons; that the more repreſentatives they have in parlement, the more intereſt they have in governement. They were called in London burghwaers or burgers, in the time of W. 1. as appears by his charter beginning thus plainly and ſhortly: "William

[e] 5 R. 2. c. iv. Stat. poſter.

the

the king greets William the biſhop, and Godfrey the portreeve, and all the burgers in London, etc[f]."

The word was uſuall in the time of the Saxons, and ſince conſtantly uſed for ſuch as are deputies for the boroughs in parlement; and in the ſame ſence it is uſed in Germany, for the deputies of the imperiall townes which have ſuffrage in their dietts and publique councells. In like manner in Sweden, thoſe who are choſen and ſent as the deputies of towns to their rickſdah, are called burgers and deputies of the burghs: and the like was in the aſſembly of the eſtates in France.

By the ſame ſtatute of our king H. 5[g]. thoſe burgeſſes who ſhall be elected to ſerve in parlement ought to be reſiant, abiding and free in the boroughs where they are choſen; which cauſeth gentlemen to take the freedome of thoſe boroughs, and ſo it is connived att.

[f] William king greet William biſceop, ⁊ Godfreð porteperan, ⁊ ealle ða burghparu binnan London. [g] 1 H. 5. c. i.

CHAP.

CHAP. LVIII.

Of the diſcreeter.

A DISCREET man (by Scaliger) ſignifies a moderate man, one ſevered from the vulgar by the judgement of wiſe men; he that diſcerneth the qualities of men and value of things.

Diſcretion is ſaid to pertaine to wiſdome [a]; and with us, and in moſt other expreſſions, a diſcreet man and a wiſe man is all one.

The ſtory of Brute's comming to this iſland is grounded uppon the wiſe counſell of Mempricius, one of his ſenators [b]. And all ſucceſſefull actions are grounded uppon diſcreet and wiſe counſells.

In our antient publique councells among the Brittains, in the time of the Romans, the chiefe men and counſellors were called ſenators, who afterwards in the time of the Saxons (ſaith our author) were called aldermen, as it were elders; not bicauſe of old age, for ſome of them were young men, butt bicauſe of their wiſdome [c].

[a] B. Tho. 3. Sent. diſt. 33. 9. 2. [b] Galfr. Monumeth. [c] Lib. de antiq. Brittan. legibus, c. vi. f. 95. Senatores quaſi ſeniores, non propter ſenectutem, cum quidam adoleſcentes eſſent, ſed propter ſapientiam.

Our saxon aunceſtors putt ſuch a value uppon this qualification of counſellors, by wiſdome and diſcretion, that they called the publique councells themſelves "the aſſembly of wiſe men," "the meeting of all the wiſe men," "the company of all the wiſe." And ſuch ſurely our parlements ought to be. King Ina beginnes his lawes: "I Ina king, etc. by the perſuaſion of my father, my biſhops, etc. and of all my ſenators and elders, wiſe men of my people, doe ordaine [d], etc.

In king Edwin's time (as venerable Bede relates) the king would not receive the goſpell, till he had conſulted with his friends, his nobilitie, and his wiſe men [e].

The league between king Alured and Guthrune is ſaid to be made by the counſell of the wiſe men of England. And king Alfred is ſaid "to make uſe of the counſell of his wiſe men," wherby to gather and putt in writing certain ordinances made by wiſe men in ſundry ſynods of former kings, which collection of ordinances, he ſaith, he ſhowed to all his wiſe men [f]. After Alfred or Alured, Edward called his wiſe men to Exceſter, to conſult with them, for the better obſervation of the peace of his realme. And in his time the league with Guthrunc, the Dane, was confirmed by the wiſe men [g].

King Æthelſtan concludes his parlement att Grateley: "Theſe things were decreed and acted att Gratanley, where was preſent,

[d] Co. ep. ix. r. et 8 r. f. 123. Wittena ȝemoteȝ. Ealna pitena ȝemoteȝ. Ealna pitе.—Lamb. courts, f. 239.—Seld. Jani, f. 124.—Leg. Saxon. Inae Rs. ȝ ðam yldeȝtan pitan minne ðeode. [e] Hiſt. eccleſ. [f] Leg. Alured. ȝ ealleȝ Angelcynneȝ pitan. Aſſer Menevenſis. Prudentiſſimorum è noſtris conſilio uſus ſum. [g] Leg. Saxon. Edovardi. ȝ ða pitan.

the

the archbiſhop, and the chiefe men, and wiſe men of king Æthelſtan, called togither." And this king calles another aſſembly of his wiſe men to Exceſter [h].

King Edmond calles his ſynode ſummoned to London, his meeting of wiſe men: and the ſame expreſſion is uſed in the lawes of king Edgar [i].

King Ethelred beginnes his lawes: " This is the councell that Ethelred king, and his wiſe councell," etc. So the league, which he tooke with Anlaf is intituled to be made by him, and all his wiſe men: and other lawes of the ſame king, they being intituled, " The advice of our lord and his wiſe men [k].

The ſtatute of the mountaineers of Wales beginns, " This is the act or decree, which the engliſh wiſe men and the mountaineers, counſellors of Wales, made," etc. And this title of the king and his wiſe men very often occurres in the parlements of this king, and of king Edmond, and the reſt of our ſaxon kings, allmoſt in all their lawes wherof any memory is tranſmitted to us [l].

The daniſh king Cnute intitles his ſtatutes: " Theſe are the ſtatutes of Cnute, king of the Engliſh, Danes, Norwegians, in his venerable councell of wiſe men." And that title the

[h] Leg. Saxon. Æthelſtan. ⁊ piotan be Æðelꝑtan.—Lamb. Archeion. p. 255.
[i] Leg. Saxon. Edmundi. Mid minna pitena ȝeðeahte.—Leg. Edgar. [k] Leg. Ethelred. Ðiꝩ iꝩ ða ȝeꝑæbnýꝑꝑe be Æðelred ⁊ hiꝩ pitan.—Lamb. Arch. p. 255.—An° 1008. [l] Senatus conſultum de monticolis Walliae.—Angelcynnej pitan. —Ep. 9 rep. Co.

latine authors give to thoſe parlements; of which manner of appellation of parlements, "the meeting of wiſe men," many more inſtances (if not too many already) doe occurre. If credit may be given to the manuſcript of Modus tenendi parliamentum, he deſcribed the manner of holding parlements in the time of Edward the confeſſor, and of W. 1. "By the diſcreeter men of the kingdome [m];" the very word uſed in this writ. In the 4 year of W. 1. he cauſed to be ſummoned through all the counties of England "the Engliſh nobles, wiſe men, and learned in the lawes."

King H. 1. is ſaid to ſend his writs over all England for his biſhops, abbots, and theines to come to his wittena gemote, his aſſembly of wiſe men (ſo it was then alſo called) to be held att Glouceſter [n].

The ſtatute of Marlebridge ſayes it was provided by the king, the more diſcreet men of the realme being called togither. The like is in the praeamble of the ſtatute 52 H. 3. [o]

The ſtatute of Glouceſter ſayes, "the king calling the moſt diſcreet men of his realme," etc. The like expreſſions are divers times found in E. 1. time, and in E. 3. time, and conſtantly downwards to our preſent time: this word "of the diſcreeter men" being found in many of our printed ſtatutes, and in the writs of ſummons to this day [p].

[m] Per diſcretiores regni.—Leg. Edovardi regis. Anglos nobiles, ſapientes, et ſua lege peritos. [n] Lamb. Archeion. p. 263. [o] 25 H. 3.—52 H. 3. St. praeamb. [p] 6 E. 1. Appelles les plus diſcretes de ſon royalme, etc.—20 E. 1. ſtat. praeamb.—30 E. 1. ſtat. Quo warrant.—15 E. 3. ſtat. 2.—20 E. 3. praeamb.

This

This is answearable to the custome of the Hebrewes in the choice of their counsellors: their doctors say, that men who were masters of wisdome, masters of power, who knew rightly to use the power committed to them, wise and skilful in judging were to be admitted of the jewish sanhedrim. And that they sent into every citty of the holy land; and whom they found to be a wise man, him they placed in the lesser sanhedrim, and from thence praeferred him to be a member of the great sanhedrim. The doctors agree, that none were admitted into the sanhedrim butt wise men. And those authors, which write of the sanhedrim, doe frequently stile the members therof by the name of wise men, and that from the rabbins and hebrew authors[q].

The commendation of wisdome is deservedly high in the holy text: the wise man sayeth of it, "Wisdome is better than rubies, and all things that may be desired are not to be compared to it." Job inquires, "Where shall wisdome be found, and where is the place of understanding?" Then, after a most elegant commendation of wisdome, "The gold and the cristall cannot equall it, and the exchange of it shall not be for jewells of fine gold; no mention shall be made of corall, or of pearles, for the price of wisdome is above rubies:" he concludes, "Behold the feare of the Lord, that is wisdome, and to depart from evill is understanding[r]." Carnall wisdome may teach us vain policyes and subtleties, to gett wealth, honor or preferment. Butt what becomes of these in the

[q] Gemar. et gloss. Talmud. tit. Sanhedr. c. i. f. 17. 1.—Gemar. Hierosolim. ad tit. Sanhedr. et Seld. de Synedr. lib. ii. p. 261.—Maimon. Hatach. sanhedr. c. ii. §. 1. Schiccardus, Menochius, Bertramus, Sigonius, Seldenus—Sapientes. [r] Psal. cxi. 10.—Pro. ix. 10. and i. 7.—Pro. viii. 11.—Job xxviii. 12.—Pro. xxviii. 15, 16, 17, 18, 19.

day of languishing, and of eternity? Will they then afford us any helpe? It is sanctified wisdome which comes from the Lord; that is the only true wisdome, which will stand us in stead heerafter. The psalmist saies, "Thou through thy commaundements hast made me wiser than mine ennemies;" and he gives the reason, "for they are ever with me[s]." The way to be wiser than our ennemies is to have the commaundements of God ever with us. "I have more understanding than my teachers, for thy testimonies are my meditation. I understand more than the antients, bicause I keepe thy praecepts[t]." True wisdome comes from God only: and therfore counsellors, and all that desire it much, seeke to God by prayer, to attaine that rich jewell. It consists in having the commandements of God ever with us, in making his testimonies our meditation, and in keeping his praecepts. Doe these things, and have wisdome; without this all other wisdome is folly.

A great example heerof was in king Solomon, to whom God saith, "Aske what I shall give thee:" he prayes to God, "Give thy servant an understanding heart, to judge thy people, that I may discerne between good and bad;" which is properly discretion. This prayer pleased the Lord, who said unto him, "Bicause thou hast not asked the life of thine ennemies, but hast asked for thyselfe understanding to discerne judgement; behold I have done according to thy wordes. Lo I have given thee a wise and understanding heart, so that there was none like thee before thee;—and I have also given thee that which thou hast not asked, both riches and honor, so that there shall not be any among the kings like unto thee all thy dayes[u]." Whoso asketh wisdome of God shall receive

[s] Psal. cxix. 98, 99. —ver. 12.—ver. 13. [t] Ver. 110. [u] 1 Kings iii. 5, 9.—ver. 10.

a returne with advantage; much more than he aſketh will be graunted to him, as it was heere to Solomon. The apoſtle incites us to this, "If any man lacke wiſdome," (as all counſellors and all others doe) "lett him aſke of God;" and the iſſue of ſuch prayers followes, "that giveth to all men liberally, and upbraideth not, and it ſhall be given him[w]." Heerwith agree the texts; "The feare of the Lord is the beginning of wiſdome," and the inſtruction of wiſdome; and in Chriſt are hidden all the treaſures of wiſdome. Oh! who would not labour for this treaſure[x]?

The uſual appellation for the hebrew ſenators was an elder, the which both before and after the giving of the law in Sinai, was taken for one who excelled the reſt in dignitie and wiſdome. That of Moſes calling the elders of the people in Aegipt is, in the Jeruſalem paraphraſe, rendred, the wiſe men of Iſrael. And where it is ſaid, "Thou ſhalt riſe up before the hoary head, and honor the face of the old man," the Arabick reades it, the face of him who is more excellent than thyſelfe. Another ſaith, of the wiſe man[y]; and of this opinion is Philo, that it means him who is preferred before others, in honor, reward, dignity and wiſdome. And ſpeaking of Moſes giving the law, he ſaith, that he uſed to call thoſe who were antient young men, and thoſe who were not yett old, preſbiters or elders; not reſpecting the number of years, or the long or ſhort time of their age, butt the faculties of their minds, wiſdome and diſcretion[z]. Wherto that of our aldermen, before noted, hath a reſemblance.

[w] James i. 5. [x] Pſal. cxi. 10.—Prov. xv. 33.—Col. ii. 3.
[y] Origen. in Eutich. p. 17. — Seld. Uxor Ebraica, lib. i. c. xv. —Exod. xix. 7.—Levit. xix. 32. [z] Philo lib. de Sacrific. Cain et Abel.

The

The preacher saith, " Woe to thee, O land, when thy king is a childe:" and the prophet denounceth, " I will give children to be their princes, and babes shall rule over them [a]." Heeruppon is observed, that Rehoboam, the son of Solomon, was such a young man, bicause he followed the counsell of the young men; he was young in wisdome, not in age, for he is reckoned 41 years of age when he began to raigne [b]. And, on the contrary, Solomon is supposed to be butt 12 years old, when he began to reigne; butt bicause the Lord gave him wisdome, he is not called a young man [c]. Where it is said, " The princes digged the well, the nobles of the people digged it," the Jerusalem Targum reades it, The sanhedrim of wise men, such as princes and nobles are or ought to be.

It is said of Abraham that he was old; the Greeke hath it, an elder or well-stricken in age, of many dayes [d]. The text goes on, " And the Lord had blessed Abraham in all things." Of this, Philo saith: " when by divine mercy and wisdome, that part of the rationall soule is rightly disposed, it receives not one only, but all kinds of blessings; he hath the manners and wisdome of an elder, and so becomes en elder [e]."

The 2 epistle of Analectus to the pope hath it thus. " It is said that the beauty of old men is the grey head [f]." This grey head is said to signify wisdome, according to that which is written, " The grey head is the wisdome of men [g]." " And where we reade (saith the epistle) that men lived above 900 years from Adam, till

[a] Eccles. xii. 16.—Isai. iii. 4. [b] 1 Ki. xiv. 21. [c] Num. xxi. 18.
[d] Gen. xxiv. 1. [e] Philo lib. Περὶ τῆ ἐζέυπψς Νῶε. [f] Prov. xx. 29.
[g] Wis. iv. 8.

Abraham

Abraham who lived fewer years by many; yett no other was first called presbiter or elder, butt Abraham who lived fewer years by many: not therfore for decrepit old age, but for wisdome are they called elders [h].

The wisdome of Abraham, Isaac, Jacob, Joseph, Moses, Joshua, Samuell, David, Solomon, and of all the holy patriarches, princes and prophets of God, may with higheſt delight be read in the holy story. Lett all men, especially counsellors, strive to be followers of them.

That comes neere our word, which is expressed of the children of Issachar, which were men that had understanding of the times, to know what Israel ought to doe: and as a consequent therof, it is said, all their brethren were att their commaundement [i].

It is said of the graecian king Agesilaus, "What actions of his doe not show his wisdome [k]?" In the schoole of the peripateticks was that of "a young man in age and manners, and an old man in wisdome [l]."

Jupiter, in a dialogue, sayes, he was a child: Cupid answears, because thou hast neither beard, nor grey haires, therfore wouldest thou be accounted a childe; when in trueth thou art an elder, wise, and subtile [m]?

The Phoenicians made themselves a captaine not by hereditary succession, butt by praerogative of merit; whom they called an elder,

[h] Hieron. in Isaiam. lib. viii. c. 24.
[i] 1 Chron. xii. 32.
[k] Quae illius actiones sapientiam non demonstrant?
[l] Arist. Nichomach.
[m] Lucian. in Dialog.

not

not bicause of old age, butt for prae-eminence of wisdome and dignity.

The graecian senates consisted of their wisest and most discreet men; as their lawes and actions demonstrate, and the patterne of governement which they gave unto the Romans and other nations. And such an high opinion was had of their senate of the Areopagitae, that Cicero breakes forth into this extravagant expression concerning them: "To deny (saith he) that the world is governed without providence, is as if a man should say, that the Athenians were to be governed without the councell of the Areopagitae.

Aristotle affirmes, that true wisdome and foelicity doe consist in the contemplation of God and of heavenly things. Plato agrees heerwith [n], and divers heathen authors, even to the same expressions which we meet with in the scripture. Their poet could affirme

> That speech is best which doth accorde
> With wisdome given from the Lord [o].

According to that of Lactantius, that "all the wisdome of man is in this one thing, to know God and worship him;" and all other wisdome will prove butt vanity [p].

Nazianzen instructs us, that "the chiefe wisdome is a commendable life, and a pure heart to God [q]."

[n] L. Ethic. 10. c. 7, 8, et August. lib iv. de Trin. c. 1. —Lib. iv. de leg. et epist. ad Syracum. [o] Phocilides, Τῆς δὲ θεοπνεύστου σοφίης
Λόγος ἐστὶν ἄριστος.

[p] Firm. divin. instit. lib. ii. c. 30. Omnis sapientia hominis in hoc uno est, ut Deum cognoscat et colat. [q] In Apol. Prima sapientia est vita laudabilis, et apud Deum pura mens.

The

The Romans were great admirers and practiſers of wiſdome; as their diſcipline, conqueſt and governement of the world doe teſtify. In the firſt inſtitution of their ſenators, thoſe were to be choſen who were moſt wiſe by age, and ſuch as were of eminent wiſdome. Their orator ſayes, "That nothing is more deſirable, nothing more excellent, nothing more worthy a man than wiſdome," which is the knowledge of divine and humane things. And Socrates holds, that "amongſt all things, which we poſſeſſe, wiſdome only is immortall." And there is no qualification more eſſentiall and univerſall than this of wiſdome for counſellors. All nations regard it in the choice of them; and no people ſo barbarous, butt have a veneration for it[r].

[r] Plut. in Romulo. Per aetatem optimé ſaperent. — Dioniſ. lib. ii. Spectatae prudentiae.—Cic. lib. ii. Offic. Sapientiâ nihil eſt optabilius, nihil praeſtantius, nihil homini dignius.—Sola inter omnes poſſeſſiones ſapientia immortalis eſt.

CHAP. LIX

And more ſufficient men.

THE ſufficiency of men, to be members of parlement, containes all neceſſary qualifications for that imployment. I ſhall in this place only mention that qualification by wealth; the rather, being applyed to the deputies of towns and citties, where they uſe to ſay of a rich man, he is a very ſufficient man: and the other ſufficiencies and qualifications are mentioned on other occaſions.

The qualification of wealth was alwayes, and ever will be a great intereſt to the poſſeſſors of it: common reaſon requires it; and both publique and private intereſt (which governe all humane affayres) doe bring wealthy men into publique councells, and ingage them in matters of higheſt and greateſt concernement in the generall, as themſelves are amongſt perticular perſons. And the greater mens eſtates are, the greater their intereſts are, and the greater is the concernement to them of the acts of councells: and it is juſt, that they ſhould be admitted to a ſhare in thoſe acts, who have ſo great a ſhare of intereſt in the commonwealth which is ſubjected therunto. Neither can the dependancies uppon rich men, which are uſually many, be better ſatisfyed or ordered than by finding their chiefs conſiderable, and parties to thoſe acts wherby

wherby all are obliged, and wherin the followers hold themſelves the more ſecure from injuries, and yield the more ſubmiſſion to their decrees. From hence might come our law, that all ſpirituall and temporall lords, by reaſon of their poſſeſſions and baronies held of the king, earles, thaines and barons, had their place in parlement[a]. Thus it was in the ſaxon wittena gemotes; and about the time of the Normans whoſoever had thirteen knights fees, and a third part, was by his eſtate and poſſeſſions qualifyed to come to parlement[b]. And thoſe who held by barony, by their revenew of 400 markes a yeare, were qualifyed to be members of parlement; and one may be a parlementary baron, though he hold by parte of a barony only[c]. Butt he muſt hold (as the law then was) by part of a barony att leaſt, and the certaine number of knights fees did not make an earldome or barony: ſome who had fewer knights fees than 13, yett were equally barons with the reſt; and ſome who had above 20 knights fees yett butt one earldome. The value of a baron's eſtate was 400 markes yearly, of an earle 400l. of a marquis 800 markes, and of a duke 800l. which was no meane valuation according to thoſe times. Some believe, that every tenant in chiefe, ſuch as were the barones minores, freeholders of ſuch a value in eſtate, did come in regard therof to parlement.

Some who were poſſeſt of caſtles were, in that reſpect, peeres, and qualifyed to ſitt in parlement[d]; as the caſtles of Arundell and

[a] Kellaway, f. 184.—Seld. Tit. hon. f. 182, 183, et 2 Tit. hon. f. 695.

[b] Cambd. Brit. f. 535.——Seld. Jani, f. 125. et Tit. hon. f. 278. [c] 13 E. 3. f. 30. pl. 18. [d] Seld. Tit. hon. f. 236, 237.—St. W. 3.—18 E. 1. et 9 E. 2. ſtat. of ſherifs, et ſtat. of templers.—Stat. 1 E. 3. et 5 E. 3. et 15 E. 3. et 20 E. 3. et 25 E. 3. et Weſtm. 1. et 2.

Abergaveny, which give that honor and priviledge to the owners of them. And theſe, by reaſon of their wealth and great eſtates principally, are by ſeverall ſtatutes called the great men of the land.

Some of the jewiſh authors doe mention, that the members of their ſanhedrim ought to be wealthy men; not of an indigent fortune, leaſt they be tempted unto bribery [e]. Riches are accompanyed with reſpect, and poverty with temptation and neglect, as the wiſe man affirmes: "The poore is hated even of his neighbour, butt the rich hath many friends; the rich ruleth over the poore, and the borrower is ſervant to the lender." Riches and honor goe togither, as is teſtifyed by many texts: and ſo it is ſaid of Zachaeus, "he was chiefe among the publicanes; and he was rich [f]."

The great philoſopher complaines, that in thoſe chiefly who moſt prevaile in wealth, governement and nobilitie uſeth to be placed [g]; and his countrymen were of this opinion, where their chiefe ſenators and governors had their eſtimation and preferrement much after the rate of their wealth. The people were divided into four rankes according to their riches; and as it is ſaid of Athens, "Out of them all, the magiſtracy was truſted with thoſe only, who did abound in riches [h]."

The like uſage was among the Romans, who much regarded riches in the choice of their ſenators; and for the ground

[e] Gemar. Babilon. ad tit. Menacoth. c. vi. f. 65. 1. etc. [f] Prov. xiv. 20. —1 Chron. i. 11, 12. et xvii. 5. et xviii. 1. et Prov. iii. 16. et viii. 18.—Luke xix. 2. [g] Ariſt. lib. iv. De repub. c. viii. [h] Gothofred. p. 699. Ex his omnibus, iis tantum qui opibus abundarent, magiſtratus credi voluit.

of it one pleads, that " wealth in a ſenator is commended, leaſt the eminency of the higheſt ranke ſhould be obſcured by want in his owne family." For prevention wherof, before the time of Auguſtus, the eſtate of a ſenator was to be 800,000 ſeſterces, which makes about 5000 l. of our money, and that was inlarged to a higher value by Auguſtus; and he who was not of that value, in his eſtate, was not capable to be choſen a ſenator [i].

Seneca notes it in his time, that " Wealth cauſed men to ariſe to the degree of ſenators [k]." And the poet obſerves the ſame among his countrymen:

" In price the prize now is, and only there
Where riches are, honor and friends appeare;
The poore man lies neglected every where [l]."

Butt ſome hold it not to be ſo from the beginning; and that the looſnes of the world, and the increaſe of riches, became a prejudice to the commonweale, " after the ſenators came to be choſen by their riches [m]."

The French ſay, that the perſon to be honored with the dignity of a baron ought to have under him a banaret, or 6 knights batchelors, every one of them having 600 frankes

[i] Laudatur cenſus in ſenatore, ne ſplendor ampliſſimi ordinis rei familiaris anguſtiis obſcuretur.—Suetonius, Dioniſ. [k] Declam. lib. ii. Senatorum gradus cenſus aſcendere facit.

[l] In pretio pretium nunc eſt, dat cenſus honores,
Cenſus amicitias, pauper ubique jacet.

[m] Pliny lib. iv. Prolegom. Poſtquam ſenator cenſu legi coeptus.

rent,

rent, or 4 chaſtellans; and theſe were their parlementary barons[n].

Surely all nations have a ſufficient regard to the wealth of their inhabitants, which is oft times more conſiderable than other intereſts though in themſelves the worthier. It is a qualification requiſite for a counſellor for the ſupport of himſelfe, the honor of his nation, the contentment of his dependancies, and for preventing of temptations and corruption.

[n] Tit. hon. Seld. p. 232. 740.

FH
MVSEVM
BRITANNICVM

THE END OF THE FIRST VOLUME.